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The importance and value of precedents can never be minimised. Though many of the decisions in a year may merely follow previous precedents yet they add to the weight of authority for questions of law decided while the few that lay down the law for the first time become in their turn valuable precedents for the years to come. Hence it would not be out of place—nay, it may be said to be even very appropriate—that at the commencement of a new year there should be a survey of the progress of law as indicated in the decisions of the year that is past. The following pages are intended to be merely as a recapitulation and review of most of the decisions of the Privy Council, the Federal Court and the Madras High Court during 1948.

HIGH COURT: ITS POWERS AND JURISDICTION.—The anomaly and hardship resulting from the decision of the Judicial Committee in the *Parlakimedi case*[1] was commented upon in *Vedachala Mudaliar* v. *The Central Traffic Board, Madras*[2], where the High Court had to consider whether it had jurisdiction to issue a writ of *certiorari* to quash the order passed by the Central Traffic Board appointed under the Motor Vehicles Act and having its office in Madras. The latter body had allowed an incompetent appeal and cancelled the permission granted to a transport company to run its buses from Madras to Mahabalipuram along a particular route. The High Court held that the body whose order was being challenged was located in Madras and had passed the order within the limits of the original jurisdiction of the High Court and further as Madras was a terminus on the bus route the transport business must be considered as being carried on at least in part in Madras and as such it could not be said that the High Court had no jurisdiction to issue the writ to quash the order of the Central Board. At the end of the judgment it was remarked "It is a matter for consideration that persons within the limits of the original jurisdiction of this Court should have a remedy to approach this Court for the issue of a *certiorari* to quash illegal orders and orders made without jurisdiction, but that in respect of similar orders relating to subject-matter outside the original jurisdiction of this Court such a remedy should be denied to parties outside its original jurisdiction. Whatever historical accidents might justify the ruling of the Judicial Committee in the *Parlakimedi case*[1], there is no reason why the anomaly resulting therefrom should be allowed to continue." Soon after this decision was rendered, the High Court had again to consider in *French India Central Transport, Ltd.*, In re[3], the applicability the principles laid down in the *Parlakemedi case*[1]. The application in that case was for the issue of a writ of *certiorari* to call for the records of the Central Traffic Board, Madras, and quash its order purporting to allow an appeal in respect of a transport service operating in the

1. (1943) 2 M.L.J. 254: L.R. 70 I.A. 129: I.L.R. 1944 Mad. 457 (P.C.).
2. (1948) 1 M.L.J. 322.
3. (1948) 1 M.L.J. 401.

moffusil. The High Court had no difficulty in holding that though the respondent Board had its offices in the Presidency Town, the subject-matter was entirely outside the original jurisdiction of the High Court and as such the decision in the *Parlakimedi case*[1] directly precluded it from issuing the writ asked for. That an act of the Government or a public officer which is not judicial but administrative cannot be quashed by a writ of *certiorari* was held in *Shiva Rao* v. *The Collector of Madras*[2]. The principles on which a Court interferes by issuing a writ of *certiorari* to quash were discussed and laid down in *Krishnaswami Ayyar* v. *Mohanlal Binjani*[3] and the Court held that errors apparent on the face of the proceedings are always treated as errors of jurisdiction for the purpose of quashing by issue of a writ of *certiorari.* In *Amirthalingam Pillai,* In re[4], the High Court had occasion to decide that it has no jurisdiction to grant leave to appeal to the Privy Council against its judgment in criminal appeals arising out of the judgments of moffussil Courts. *Thiruvengada Mudaliar,* In re[5], is an important decision on the scope of the jurisdiction of the High Court under clause 17 of the Letters Patent. It was held in that case that in the exercise of its inherent jurisdiction vested in it under the Letters Patent, the High Court has power to appoint a guardian in respect of the person and property of minors covering even their undivided interest. In the case under review the father and manager of a Hindu joint family applied under clause 17 of the Letters Patent for being appointed guardian of the ancestral joint family property belonging to the minor sons and for sanction of the sale of that property as being beneficial to the interest of the minors and it was held that the High Court would be justified in granting the prayer both by virtue of the power conferred by clause 17 of the Letters Patent and the practice in our High Court.

The Bar : Its Privileges, Rights and Duties.—A Full Bench had to consider in *A Pleader* in the matter of[6], the propriety of the conduct of a pleader giving evidence in a case for a party for whom he was appearing without cancelling the vakalat. It was held that such conduct was improper and in no circumstances could it be considered that it was anything other than deserving of condemnation. Their Lordships thought that as there was no authority or rule which prohibited such conduct there was a doubt whether it could be said to be professional misconduct within the purview of section 13 (*b*) of the Legal Practitioners' Act and that the doubt should be exercised in favour of the pleader. At the same time they pointed out the necessity for the Madras Bar Council to frame rules in regard to such matters. In *Gopala Menon,* In re[7] it was held that while there could be no objection to having the name of an advocate changed in the certificate and in the roll of advocates, the High Court could not grant such a prayer in so far as it related to the enrolment papers filed with the Bar Council. It was cautioned that the change where it suggests that he belongs to a caste other than that which is indicated by his original name, should not be understood as deciding that he is entitled to describe himself as belonging to any particular caste. In the matter of the fee payable to a junior under rule 33 of the Legal Practitioners Fees Rules, the High Court felt in *Basavayya* v. *Raghavayya*[8], that it could not give effect to the spirit of the rule overlooking its clear language in a case where the junior died after the framing of the issues and another junior was substituted in his place. The result was that no junior fee was allowable in such a case. Their Lordships held that it was a matter for the Rule Committee to make suitable amendments to the rule to cover such cases.

Constitutional Law.—The competency of the Indian Legislature in regard to extra-territorial legislation was raised before the Privy Council in *Wallace Brothers and Co., Ltd.* v. *Commissioner of Income-tax, Bombay*[9], with reference to section 4 (1) (*b*) (*ii*) and section 4-A (*c*) of the Indian Income-tax Act. Before proceeding

1. (1943) 2 M.L.J. 254 : L.R. 70 I.A. 129 : I.L.R. 1944 Mad. 457 (P.C.).
2. (1948) 1 M.L.J. 266.
3. (1948) 2 M.L.J. 559.
4. (1948) 2 M.L.J. 416.
5. (1948) 2 M.L.J. 47.
6. (1948) 1 M.L.J. 170.
7. (1948) 1 M.L.J. 361.
8. (1948) 1 M.L.J. 344.
9. (1948) 2 M.L.J. 62 (P.C.).

to the decision of the case their Lordships stated the principle in regard to such matters thus : " There is no rule of law that the territorial limits of a subordinate Legislature define the possible scope of its legislative enactments or mark the field open to its vision. The ambit of the powers possessed by a subordinate Legislature depends upon the proper construction of the statute conferring these powers . . . . The enabling statute has to be read against the background that only a defined territory has been committed to the charge of the Legislature ". Then section 99 (1) read with section 100 of the Government of India Act was considered and it was said that it did not help one way or another in determining the authorised area of taxes on income. Then they decided that the validity of the legislation, *i.e.*, section 4 (1) (*b*) (ii) and section 4-A (*c*) of the Indian Income-tax Act depends on the sufficiency for the purpose for which it is used of the territorial connection set forth in the impugned portion of the statutory test and confined themselves to that only and did not lay down any general formula defining what territorial connection is necessary. As they found the company at home in British India, they held it was a person properly subject to the jurisdiction of the Central Indian Legislature and that hence the impugned legislation was not *ultra vires* the Indian Legislature. *Ramgarh State* v. *Province of Bihar*[1] is the first decision of the Federal Court in regard to the scope and limits of its original jurisdiction. According to that decision the Federal Court is not a Court of original civil jurisdiction in all matters and between all parties and that its jurisdiction is derived from and is limited by section 204 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Adaptation Order, 1947, which imposes limitations on the exercise of its original jurisdiction both as regards parties and the subject-matter. It was pointed out that apart from the relief claimed, unless a plaintiff comes within one or the other of the classes of parties mentioned therein *i.e.*, the Dominion, the Provinces and the Acceding States, the Federal Court would have no jurisdiction to entertain his suit under section 204. An argument that " a state " in the proviso to section 204 includes a non-Acceding State so as to enlarge the scope of the jurisdiction of the Court was rejected as also a suggestion that the Federal Court would be competent to entertain a suit when there is no other Court in the land to decide questions of the kind raised by the plaint in a suit. In *Kuppuswami Rao* v. *The King*[2], the Federal Court had to decide the question whether it was precluded from deciding as to the competency of an appeal by the granting of a certificate by the High Court under section 205 of the Government of India Act and as to the meaning of the words " judgment " and " final order." Their Lordships of the Federal Court say that though they will not question that a dispute on the interpretation of the Government of India Act had arisen in the matter when once a certificate had been granted under section 205 (1) of the Act, the certificate would not preclude them from considering the point whether the appeal is really from a judgment, decree or final order of the High Court. The question before the Federal Court was whether an order passed in revision against an interlocutory order made on a preliminary objection as to the maintainability of a prosecution in the absence of the consent of the Governor of the Province under section 270 (1) was a "judgment" or a "final order". According to the decision of the Federal Court as the words " judgment or final order " are used in section 205 (1) and impart jurisdiction to the Federal Court to entertain appeals both in Civil and Criminal matters, it would not be proper to construe them in a certain way when applicable to appeals in civil matters and give them a wider meaning when considered in connection with appeals from criminal proceedings. After pointing out that the word " judgment " means with reference to a civil case, the determination of the rights of parties in the matter brought before the Court, and that it is used in the Criminal Procedure Code to indicate the termination of the case by an order of conviction or acquittal of the accused, it was decided that it cannot cover a preliminary or interlocutory order in a criminal case. In the result their Lordships held that the order before them was neither a " judgment " nor a " final order " and

1. (1948) 2 M.L.J. 44.
2. (1948) 1 M.L.J. 103 (F.C.).

that hence the appeal to the Federal Court against such an order was not maintainable. It would be convenient to notice at this stage the decision in *Sriramamurthy Naidu* v. *Satyanarayana Naidu*[1]. There a suit for partition was held to be not maintainable by the trial but the High Court on appeal held it to be maintainable and remanded the suit for disposal after the trial Court had given findings on the issues on which evidence had been let in. On the question whether such an order could be the subject-matter of an appeal to Federal Court, it was held that the order passed by the High Court was not a final order as the matters in dispute between the parties had not been finally decided and that hence leave to appeal against such an order could not be granted. The decisions in *Sivasankara Thevar*, In re[2] and *Venkataraman*, In re[3], are two cases in which the question of the competency of an appeal to the Federal Court against orders passed on applications under section 491, Criminal Procedure Code, was canvassed. The basis of the two decisions was that orders passed by the High Court in applications under section 491, Criminal Procedure Code, are in the exercise of the criminal jurisdiction of the Court and as such no appeal would lie to the Federal Court under the provisions of the Federal Court (Enlargement of Jurisdiction) Act of 1948. It was also pointed out in *Venkataraman*, In re[3], that where no question of interpretation of the Constitution Act is involved in the disposal of the case under section 491, Criminal Procedure Code, no right of appeal can arise under section 205 of the Government of India Act. The decision in *Veeraswami* v. *Provincial Government of Madras*[4], held that in the absence of a statutory right such as is indicated in section 240 of the Government of India Act, a Government servant would have no right, if the Government wished to dispense with his services, other than reasonable notice and that a public servant whose conduct is enquired into has no common law or statutory right to appear by counsel. Where the proposed action against a Government servant is dismissal or reduction in rank, the attention of such servant must, according to the decision, be prominently drawn to the punishment which might be meted out to him at the time when the proposed action is about to be taken. After this decision was rendered by our High Court the Privy Council had to consider in *High Commissioner for India* v. *I. M. Lal*[5] the nature of the provisions of section 240 of the Government of India Act. The two decisions of the Board in *Rangachary* v. *Secretary of State for India*[6] and *R. Venkata Rao* v. *Secretary of State for India*[7] were contrasted and their Lordships of the Privy Council held in agreement with both the High Court and the Federal Court that the provisions of sub-section (3) of section 240 are prohibitory in form which is inconsistent with their being permissive and that they are mandatory and necessarily qualifies the right of the Crown recognised by sub-section (1) and provide a condition precedent to His Majesty's exercise of his power of dismissal provided by that sub-section. They also held that no action is proposed within the meaning of sub-section (3) of section 240 until a definite conclusion has been come to on the charges against a Government servant, and the actual punishment to follow is determined upon and that it is on that stage being reached that the statute gives the civil servant the opportunity for which sub-section (3) makes provision. On the question of the right of a servant of the I. C. S. to recover arrears of pay by action in a civil Court their Lordships had no difficulty in holding relying on the decision of *Mulvenna* v. *The Admiralty*[8] that he had no statutory right to recover it by suit and that there was no covenant under which the particular civil servant is given a right to his pay. The test for determining the necessity of the consent of the Governor-General under section 270 of the Government of India Act was laid down by the Judicial Committee in *Gill* v. *King-Emperor*[9]. They held that a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope

1. (1948) 2 M.L.J. 511.
2. (1948) 2 M.L.J. 76.
3. (1948) 2 M.L.J. 513.
4. (1948) 1 M.L.J. 6.
5. (1948) 2 M.L.J. 55 (P.C.).
6. (1937) 1 M.L.J. 515 : L.R. 64 I.A. 101 : I.L.R. 1937 Mad. 517 (P.C.).
7. (1939) 1 M.L.J. 529 : L.R. 64 I.A. 55 : I.L.R. 1937 Mad. 532 (P.C.).
8. (1926) S.C. 842.
9. (1948) 2 M.L.J. 6 (P.C.).

of his official duty and that the test as to the necessity for consent is whether the public servant, if challenged, can reasonably claim that, what he does he does in virtue of his office. The fact that the opportunity to do the act arose on account of his official position occupied by the public servant was held in *Doraiswami Iyer*, In re[1] would not matter or affect the question of the necessity for consent under section 270 of the Government of India Act or sanction under section 197, Criminal Procedure Code. In *Albert West Meads* v. *The King*[2], it was held that the proceedings before a Court-Martial are not " proceedings civil or criminal " in the sense in which those words are used in section 270 (1) of the Government of India Act and that they indicate only the civil or criminal proceedings capable of being instituted under the ordinary law of the land and do not include proceedings under the military law. Another point that was decided in that case was that the acts of a public servant of fraudulently misapplying money entrusted to his care as a public servant could not be said to be acts done by him by virtue of his office that he held and that hence sanction under section 270 (1) was not necessary for his prosecution for the offences committed by him. It remains to be seen whether even after these pronouncements the same question would not be re-agitated.

CRIMINAL LAW.—In *Crown Prosecutor* v. *R. K. Pillai*[3], it was held that the establishment of a connection between the performance of the official duty and the demand or payment of gratification was necessary before it could be said that the gratification offered was a motive or reward for any of the purposes mentioned in section 161, Indian Penal Code. Where, in a capital case, irreconcilable or totally contradictory statements are made by witnesses of the crime at different stages of time and the only explanation offered is that at one stage they were threatened by the prisoners and at another stage by the police, it was held in *Bijjili Papamma*, In re[4], that the witnesses in such case should be proceeded against under section 193, Indian Penal Code read with section 476, Criminal Procedure Code. In *Madiga Narasigadu*, In re[5], it was held that it would not be in the interests of justice that certain illiterate witnesses should be proceeded against under section 193, Indian Penal Code, simply because the statements which they made under section 164, Criminal Procedure Code, were subsequently denied in the preliminary enquiry and which is explained as being due to police coercion. Where an act was done with an intention to commit an offence under section 201, Indian Penal Code, but in fact there was no disappearance of any evidence of the commission of an offence, it was held in *Parasa Mangadu*, In re[6], that the offence committed was only an attempt to cause the disappearance of the evidence of the offence and the accused could not be convicted of an offence under section 201, Indian Penal Code read with section 149, Indian Penal Code, but only under section 201 read with section 511, Indian Penal Code. In *Sivaprakasam Pillai*, In re[7], it was held that where the alleged offence consisted in posting a letter containing a false charge against an official to the Inspector-General of Police, Madras, the offence could be said to be completed only, when the letter reached the destination, *i.e.*, the Inspector-General's Office, Madras. There is no attempt to commit the offence by posting the letter. Where a head constable attempted to arrest a person on suspicion without the necessary warrant in writing required by section 56 (1) of the Criminal Procedure Code, the use of Criminal force by the person suspected against the head constable was held in *Muni Reddi*, In re[8], would not amount to an offence under section 353, Indian Penal Code. In *Ganeshmal Sait*, In re[9], the chief element of the offence under section 384, Indian Penal Code, is stated to be that of intentionally putting a person in fear of an injury to that person or to any other and thereby *dishonestly* inducing the person so put in fear to deliver to any person any property or valuable security. The person putting that individual in fear of

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1. (1948) 2 M.L.J. 116.
2. (1948) 2 M.L.J. 120 (P.C.).
3. (1948) 1 M.L.J. 142.
4. (1948) 1 M.L.J. 116.
5. (1948) 2 M.L.J. 558.
6. (1948) 2 M.L.J. 375.
7. (1948) 1 M.L.J. 21.
8. (1948) 1 M.L.J. 377.
9. (1948) 1 M.L.J. 412.

injury must have the intention that wrongful loss should be caused. In *Vaiyapuri Goundan* v. *Kuppuswami Goundan*[1], it is laid down that in order to constitute an offence under section 427, Indian Penal Code, there should be an intention to cause " wrongful loss " as defined in section 28 of the Indian Penal Code, *i.e.*, loss by unlawful means of property to which the person losing it is legally entitled. As the complainant in the case was not legally entitled either to the land or to the crops standing on it, its destruction by the cattle of the accused was held not to amount to an offence under section 427, Indian Penal Code. It was held in *Anthony Udayar* v. *Velusami Thevar*[2], that to secure the protection of the ninth exception to section 499, Indian Penal Code, it was necessary that the imputation should have been made in good faith and for the protection of the interest of the person making it or of any other person or for the public good. As to what would amount to good faith, it was said that good faith is relative to a great extent and must be determined by the circumstances under which the imputation is made, the social status and level of education of persons making the imputation and their reasoning capacity. In *Gopalan*, In re[3], the ingredients of an offence under section 503, Indian Penal Code, were considered and it was held that the section would be inapplicable unless the speech alleged to constitute criminal intimidation threatens injury to the person, reputation or property of an individual or group of individuals and that it is the intention of the speaker that has to be considered in deciding as to whether what he stated comes within the mischief of section 503. The speaker need not know that the persons intended to be frightened were present when he made the speech. A threat of social boycott was held would not amount to an offence under section 506, Indian Penal Code, in *Selathu*, In re[4]. It was also held that the enforcement of social boycott would not amount to an injury within the meaning of section 44, Indian Penal Code.

EVIDENCE.—In *Gill* v. *King-Emperor*[5], their Lordships of the Judicial Committee have considered the circumstances under which evidence as to conspiracy would be admissible under section 10 of the Evidence Act. They also held that just as a trial Judge may admit evidence under section 10, when he has such a reasonable ground of belief as is postulated, yet must reject it if at a later stage of the trial that reasonable ground of belief is displaced by further evidence, so the appellate Court, which has refused that belief, must refuse also to admit evidence which was admissible only upon the footing of the belief being entertained. It was further pointed out that it is not the correct view that in a conspiracy charge, evidence once admitted remains admissible evidence whatever new aspect the case may bear whether in the original or appellate Court. In *Ramaswami Goundan* v. *Subbaraya Goundan*[6], it was held that a previous judgment though not *inter partes* would be admissible under section 35 of the Evidence Act to prove a statement made by a predecessor-in-title of the party against whom the document is sought to be used, and an admission contained in such judgment as to the date of the death of the father of the predecessor-in-title would be admissible to prove the date of death of such person. In the same case the limits of the rule as to the presumption of genuineness of old documents were considered. It was held that section 90 of the Evidence Act only states that Courts may draw the presumption referred to in the section and not that it must draw the presumption. It was pointed out that in many cases it would be most dangerous to draw the presumption that a document was genuine merely because it was thirty years old according to the recitals in it and came from proper custody. It was suggested that the Court may mark the document as an exhibit without requiring formal proof and then consider having regard to the evidence and surrounding circumstances whether it was or was not genuine. In *Soma Reddi* v. *Tippa Reddi*[7], it was held that where in a suit on a promissory note it is pleaded in defence that it was only a voucher of prior borrowing to which sections 8 and 9 of the Madras

1. (1948) 1 M.L.J. 330.
2. (1948) 1 M.L.J. 420.
3. (1948) 2 M.L.J. 383.
4. (1948) 2 M.L.J. 522.
5. (1948) 2 M.L.J. 6 : L.R. 75 I.A. 41 (P.C.).
6. (1948) 1 M.L.J. 215.
7. (1948) 2 M.L.J. 282.

Agriculturists' Relief Act would apply and that it was executed owing to a fraudulent misrepresentation of the plaintiff, oral evidence to substantiate the plea would be admissible.

TORT.—On a question whether a tom tom made in the following words ; " S. B.'s goods (plaintiff's) are being sold by public auction at 3 P.M. on 27th October, 1944," constituted a slander of the plaintiff, it was held in *Sukraji Bikaji* v. *Kundanmal Packraj*[1] that the mere statement that the goods were being sold by public auction without the addition that they were sold in pursuance of a decree or through the Official Receiver did not by itself suggest the innuendo that the plaintiff was not solvent and that his goods were being brought to sale by auction by the creditor.

HINDU LAW.—Their Lordships of the Judicial Committee have in *Lala Lachmandas* v. *Commissioner of Income-tax, Punjab*[2], laid down the rights of an individual coparcener of a Hindu joint family. They say that while remaining joint he can possess, enjoy and utilise, in any way he likes, property which was his individual property, not acquired with the aid of or with any detriment to the joint family property. He can, according to the Lordships enter into contractual relations with others including his family, so long as it is represented in such transaction by a definite personality like its manager and that in such a case he retains his share and interests in the property of the family, while he simultaneously enjoys the benefit of his separate property and the fruits of its investment. To be able to do this, it was pointed out, it is not necessary for him to separate himself from his family. The actual decision in the case was that there could be a valid partnership between the Karta of a Hindu joint family representing it on the one hand and a member of that family in his individual capacity on the other. *Krishnamoorthy Iyer* v. *Nataraja Iyer*[3] considered the degree of prudence expected of a manager of a Hindu joint family with reference to an alienation by him of family property. It was held that in working out the equity in favour of the alienee of an item of family property, it was open to the Court to allot the alienated item to the share of the alienating coparcener, where that could be done without prejudice to the rights of other coparceners and that this could be worked out in a suit by the coparcener for partition without the alienee being compelled to file a separate suit for partition. In *Subbiah* v. *Venkateswarlu*[4], it was held that when the same property is alienated by different members of the family to different persons, the rights of the alienee from the one is not stronger than the position of the alienee from the other and that if at all there is any difference, equity favours the first alienee. The rights of the second alienee is only to sue for a general partition and ask that the alienated item be allotted to the share of his alienor. In *Durga Prasad* v. *Ghanshiam Das*[5], the Privy Council held that where it is established that an old family firm was joint and that the branch firms started with a nucleus of family property were also joint, it is the task of a member alleging a separation to prove it. As a determining factor of the whole case the question of onus would only arise if the Court finds the evidence so evenly balanced that it can come to no definite conclusion. In *Muthuswami Thevar* v. *Chidambara Thevar*[6], it was ruled by the Privy Council that under Hindu Law the only persons who can give a son in adoption are the father and the mother and that in the life time of the father, the mother cannot act without his permission. On the question of the validity of an adoption of a married man among Sudras in the Madras Presidency, their Lordships held that according to the Dattaka Chandrika, which is regarded as authoritative in the Province of Madras " marriage concludes the period within which a Sudra may be adopted." In *Narasimhalu* v. *Someswara Rao*[7], the true nature of a partition arrangement is explained and it was held that the allotment of a *jyestabagam* to the eldest member was no more than giving a larger share than would be strictly

1. (1948) 2 M.L.J. 270.
2. (1948) 1 M.L.J. 201 (P.C.).
3. (1948) 1 M.L.J. 430.
4. (1948) 1 M.L.J. 478.
5. (1948) 2 M.L.J. 226 (P.C.).
6. (1948) 2 M.L.J. 468 (P.C.).
7. (1948) 1 M.L.J. 150.

due to him and involved no gift by the younger brother or brothers with the result that the eldest brother would hold it as ancestral property in which his sons are entitled to a share. It was also held in the same case that a daughter born during the pendency of a suit for partition could have no legal claim against the plaintiff's share of the family property for her marriage expenses. The proper mode of providing for the marriage expenses of a daughter in a partition decree was also indicated. In *Radha Krishna* v. *Satyanarayana*[1], it was held that when once a disruption or division of the status of the family takes place as the result of an unilateral declaration of intention of a member to divide which has been communicated to the others it is not open to that member thereafter to nullify its effect so as to restore the family to its original joint status. Such a withdrawal cannot amount to an agreement to reunite. In *Kaliammal* v. *Sundarammal*[2], it was held that after partition the presumption would be against reunion and that though reunion could be proved by subsequent conduct of the parties, to establish it, it was necessary to show not only that the parties already divided lived together, but that they did so with the intention of thereby altering their status and forming a joint estate with all its usual incidents. Another point decided in the same case was that a compromise by a widow by which the entire right of the reversion is surrendered without any corresponding benefit to the estate cannot be binding on the reversioners as it is neither reasonable nor prudent. A suit for partial partition and possession was held in *Subbarayudu* v. *Ramanaiah*[3], to be maintainable as between strangers who have taken on lease different parcels of family property from different coparceners in the joint family. In *Gopala Krishna Chetty* v. *Dorai Babu*[4], it was pointed that before an illegitimate son of a Sudra can establish a claim to a share in the properties of his putative father it must be shown that the son was born of a union neither adulterous nor incestuous, but that if the claim was only for maintenance such proof was not necessary. It was decided in that case that after the death of a Sudra father, his illegitimate son born of a permanently kept concubine, the union not having been adulterous or incestuous, was not entitled to a share in the properties of the family of which his father was an undivided (*avibakta*) coparcener when he died. The nature and extent of the right of a step-mother to maintenance was considered in *Audemma* v. *Varada Reddy*[5], in the light of an exhaustive discussion of the relevant case law. In regard to the right of a widowed daughter-in-law to maintenance, it was held in *Appavu Udayan* v. *Nallammal*[6], that a widowed daughter-in-law has a moral but not a legal right to maintenance from her father-in-law out of his self-acquired property and that on the death of the father-in-law, if his self-acquired property decended by inheritance to his heirs, the moral liability of the father-in-law ripened into a legal liability of his heirs enforceable against them by the daughter-in-law to the extent of their inheritance; in either case existence of indigence is not an essential factor to be proved to establish liability.

MAHOMEDAN LAW.—In *Saiyed Mazhar Husain* v. *Adiya Saran Singh*[7], their Lordships of the Judicial Committee laid down the circumstances which would satisfy the requirements of the Shia Law necessary to the valid creation of a wakf when there is no evidence as to the execution of a wakfnama or any oral dedication. In *Nawazish Ali Khan* v. *Ali Raza Khan*[8], the Privy Council has decided that powers of appointment are not recognized in Muslim Law and that to add to the testamentary capacity of Muslims the right to create powers of appointment might seem to encroach on the sphere of the Legislature. The bequest in that case was to three successive tenants for life and then to the successor appointed under the power conferred by the will and it was held that the power of appointment was invalid as opposed to Muslim Law. They further held that Muslim Law admits only ownership unlimited in duration but recognizes

1. (1948) 2 M.L.J. 331.
2. (1948) 1 M.L.J. 366.
3. (1948) 2 M.L.J. 181.
4. (1948) 2 M.L.J. 221.
5. (1948) 1 M.L.J. 30.
6. (1948) 1 M.L.J. 110.
7. (1948) 1 M.L.J. 259 (P.C.).
8. (1948) 2 M.L.J. 303 (P.C.).

interests of limited duration in the use of property and that there was no difference between the several schools of Muslim Law in their fundamental conception of property and ownership.

INSOLVENCY LAW.—The question as to the extent of the applicability of the law laid down in *Cohen* v. *Mitchell*[1], in regard to the question of the vesting in the Official Assignee of the after-acquired property of an undischarged insolvent in a case arising under the Presidency Towns Insolvency Act was elaborately discussed in *Abdul Rahim* v. *The Official Assignee of Madras*[2]. Their Lordships after tracing the growth of the judge-made law in England came to the conclusion that the distinction between real and personal property made in England in applying the rule of postponement of vesting of after-acquired property till the intervention of the trustee could not be properly applied in India and that there was no difference in India between moveable and immoveable property of the insolvent for the purpose of vesting in the Official Assignee. On an examination of the provisions of the Presidency Towns Insolvency Act it was held that the moment a property is acquired by or devolves on an undischarged insolvent, such property becomes *eo instanti* vested in the Official Assignee or Receiver and that there is no distinction in this respect between property belonging to and vested in the insolvent at the commencement of the insolvency and property which may be acquired by or devolve on him subsequent to the adjudication and before discharge. The transfer by the undischarged insolvent of his after-acquired property was held to be void as against the Official Assignee. The desirability of the Legislature intervening and abolishing the anomalies and differences between the law of insolvency applying to Presidency Towns and that applying to the moffusil was pointed out at the close of the judgment. A matter of procedural importance was decided in *Visvanathan Chettiar*, In re[3], (*i.e.*) that the issue of summons under section 36 of the Presidency Towns Insolvency Act to persons capable of giving evidence of the insolvent's dealing with his property is governed by Order 16 of the Civil Procedure Code. The decision in *Abdul Shukoor Sait* v. *The Official Assignee of Madras*[4] holds that section 7 of the Presidency Towns Insolvency Act would not apply to matters totally unrelated to the administration of the estate of the insolvent and distribution of his assets among the creditors. These would not relate to disputes arising between third parties simply because the disputes are in a remote way connected with insolvency proceedings. Where the Official Assignee wants to obtain the directions of the Court in such unrelated matters, the application would more appropriately fall under section 85 (3) of the Act. The question of interest to be allowed on deposits made with an insolvent by his relatives where the amounts were carried forward from year to year with interest calculated at 12 per cent. per annum was considered in *Annapurnamma* v. *The Official Assignee, Madras*[5]. The Official Assignee allowed only 6 per cent. interest on the amounts originally deposited from the date of deposit to the date of adjudication, basing his decision on clause 23 (2) of the Second Schedule, Presidency Towns Insolvency Act. But the Court held relying on *Paton* v. *Inland Revenue Commissioners*[6], that the debts provable in the case were not the original debts but the capital sums consisting of a number of debts inclusive of interest which was calculated at the end of each year at 12 per cent. and carried forward from year to year and that for the purpose of the dividend it is the capitalised amount shown to the credit of the depositors in the last account that should be taken as the proper amount. On a question as to a right of appeal under the Provincial Insolvency Act, it was held in *Pedda Iswara Reddi*, In re[7], that section 5 of that Act cannot override the provisions of section 75 of the same Act in so far as the latter section confers a right of appeal in any instance. In *The Official Receiver of Ramnad* v. *Devarayan Chettiar*[8], section 28-A introduced by Act XXV of 1948 was held to be retrospective and that after the amendment the father's disposing power over his sons' shares vested in the Official

1. (1890) 25 Q.B.D. 262.
2. (1948) 2 M.L.J. 656.
3. (1948) 1 M.L.J. 241.
4. (1948) 2 M.L.J. 274.
5. (1948) 2 M.L.J. 465.
6. (1938) A.C. 341.
7. (1948) 1 M.L.J. 310.
8. (1948) 2 M.L.J. 415.

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Receiver after the adjudication. As in that case the sons had instituted a suit for partition against their father after adjudication, it was held that the Official Receiver had no right to act on behalf of the sons after that suit. The powers of the Official Receiver on an annulment of the adjudication in respect of properties vested in him under section 37 of the Provincial Insolvency Act were considered in *Official Receiver, East Godavari* v. *Tadi Murali Mohan Reddi*[1], and it was held that his powers in respect of such properties need not be expressly conferred by the order under section 37 and they may be such as are necessarily implied by the vesting order and that the receiver will have in respect of such properties the powers he had in respect of the insolvent's properties generally before the date of the annulment. The Official Receiver was held entitled to maintain a suit to enforce a claim for contribution possessed by the insolvent. The effect of an annulment of the adjudication was held in *Sakhamuri Perayya* v. *Nimmaraju Kondayya*[2], to relate back to the date of the adjudication and is as if no adjudication had taken place except as regards the acts of the Court and the Official Receiver which are validated by section 37 of the Provincial Insolvency Act. It was held that as there was no statutory prohibition against the sale of property by the insolvent after initiation of insolvency proceedings, such a transaction would be binding as between the parties thereto. In *Thimmappa* v. *Balayya*[3], a rather curious case, certain alienations made by the insolvent were set aside and subsequently the adjudication was annulled but the property was ordered to continue to vest in the Official Receiver and thereafter the alienees deposited sums enough to pay off all the creditors and asked that they might be given possession of the property. The insolvent also deposited enough to pay the creditors and the alienees and asked that he might be given possession of the properties. In deciding in favour of the alienees the Court remarked that an insolvency Court administers the assets of the insolvent in equity for the benefit of the creditors and restores it to the person to whom it is properly due, if the claims of the creditors do not necessitate the sale of the property. That a mortgagee from an insolvent could under certain circumstances appeal against the order of adjudication as a " person aggrieved " within the meaning of section 75 of the Provincial Insolvency Act was held in *Official Trustee of Madras* v. *Sethu Chettiar*[4]. Orders allowing certain alienees from an insolvent to be added as party respondents in the insolvency proceedings were held in *Pedda Iswara Reddy*, In re[5], to be orders made or decisions come to in the exercise of insolvency jurisdiction within the meaning of section 75 of the Act and as such appealable. In *Eacharan Nair* v. *Chinnayya Rowther*[6], where a mortgagee from an insolvent who had not proved his debt in insolvency sued for a money decree after the annulment of the adjudication, it was held that he can rely on section 78 (2) of the Provincial Insolvency Act and exclude the period between the date of the order of adjudication and the date of the order of annulment in computing the period of limitation for his suit.

PROPERTY LAW.—The assignment of the right of a principal to recover moneys due from an agent on the revocation of his power of attorney was held in *Sheik Mohammed Maracair* v. *Bathummal Beevi*[7], not to be an assignment of a mere right to sue. In *Catholic Mission Presentation Convent* v. *Subbanna Goundan*[8], the conditions necessary for a transferee invoking the protection of section 41 of the Transfer of Property Act to establish are laid down. It was pointed out that the consent of the real owner referred to in the section must be to the transferor holding the property as ostensible owner and not also to the transfer sought to be protected under the section. The real owner must be shown in some manner to have been privy to the creation of the ostensible ownership. The object and applicability of section 52 of the Transfer of Property Act was considered by the Privy Council in *Gouri Dutt Maharaj* v. *Sheikh Sukur Mohammed*[9]. It was said that the broad purpose of

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1. (1948) 1 M.L.J. 473.
2. (1948) 1 M.L.J. 290.
3. (1948) 2 M.L.J. 590.
4. (1948) 2 M.L.J. 194.
5. (1948) 1 M.L.J. 310
6. (1948) 2 M.L.J. 256.
7. (1948) 1 M.L.J. 298.
8. (1948) 1 M.L.J. 11.
9. (1948) 2 M.L.J. 79 (P.C.).

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section 52 was to maintain the *status quo* unaffected by the act of any party to the litigation pending its determination and that the applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in *bona fide* proceedings. Though the section may not contemplate a decree or order which is entirely alien to the issues raised between the parties, it was held that it applies to a compromise decree. In *Rattayya* v. *Chandrayya*[1], it was pointed out that section 53-A of the Transfer of Property Act requires that the contract relied on must be signed by the person claiming to recover possession or on his behalf presumably by some one. Applying this it was held that when the sons impugn an unregistered sale signed by the father, the vendees in possession under such a sale cannot rely on the doctrine of part performace. The Privy Council in *Subrahmanyam* v. *Subba Rao*[2], held that the words " transferor " in section 53-A refer back to the person who " contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf." In the case of a contract of sale of the immoveable properties of a minor by his mother and guardian to discharge his father's debts, as the act is on behalf of the minor, the latter was held to be the person who most aptly answered to the description of "the transferor" in section 53-A with the result that he would be debarred from enforcing against the transferee any right in respect of the property in his possession other than a right expressly provided by the terms of the contract of sale. In *The Official Receiver, East Godavari* v. *Tadi Murali Mohan Reddi*[3] it was held that a "contract to the contrary" within the meaning of section 82 of the Transfer of Property Act is a contract between a mortgagor and a mortgagee. A mortgage by two mortgagors of their properties under which the properties of the first mortgagor were to be liable in the first instance and the other properties were tc be liable only in the event of the security of the properties liable in the first instance being insufficient was held to be a " contract to the contrary " within the meaning of section 82. In considering the some point it was held in *Satyanarayanamurthy* v. *The Official Receiver, East Godavari*[4], that an indemnity clause contained in a sale deed in favour of a vendee of some of the properties charged for the payment of maintenance by a decree against the vendor would not amount to a " contract to the contrary ". within the meaning of the section. That a charge under section 45 of the Madras District Municipalities Act for property tax is one created by operation of law and falls within section 100 of the Transfer of Property Act was held in *A.M.A. Firm* v. *Marudachalam Chettiar*[5]. It was further held that a sale in pursuance of such a charge had not the effect of annulling the prior encumbrances and the mortgagee purchasers in execution of a decree on an earlier mortgage who had not been inpleaded in the suit by the Municipality were not barred from proceeding with a suit to enforce the right of redemption under section 91 of the Transfer of Property Act against the purchasers of the property in the sale in execution of the charge decree. In *Venugopala Pillai* v. *Thirunavukkarasu*[6], a lease of the toddy yield of a coconut garden was held to be a lease for agricultural purposes and that therefore a sufficiently reasonable notice was necessary before it could be terminated and that the principle underlying section 106 of the Transfer of Property Act would be applicable to such a case. In *K. K. Kunhothi* v. *P. Mohamed Koya*[7], it was held that the right of redemption provided by section 60, Transfer of Property Act, is available to a jenmi or a person claiming through him even as regards kanom documents and that there was nothing in the Malabar Compensation for Tenants' Improvements Act to take away that right.

Madras Estates Land Act.—Where two parcels of land comprised in an inam village were treated even before the settlement as separate grants and at the time of the settlement the lands were confirmed under two title deeds, it was held in *Mangamma* v. *Appudu*[8], that the lands did not

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1. (1948) 1 M.L.J. 392.
2. (1948) 2 M.L.J. 22 (P.C.).
3. (1948) 1 M.L.J. 473.
4. (1948) 2 M.L.J. 426.
5. (1948) 1 M.L.J. 284.
6. (1948) 2 M.L.J. 155.
7. (1948) 2 M.L.J. 293.
8. (1948) 1 M.L.J. 247.

form part of an "estate" within the meaning of section 3, 2 (*d*) of the Madras Estates Land Act. In *Suryaprakasa Rao* v. *Maharaja of Pithapuram*[1], it was held by the P.C. that when a person is recognised as a "landholder" under section 3 (5) of the Act, he becomes clothed with full statutory authority to collect the rents and profits and his receipt of them cannot be said to be wrongful. A usufructuary mortgagee of a post-settlement inam was held in *Seetharama Raju* v. *Satyanarayanamurthi*[2], to be "landholder" within the meaning of the Act. In *Ramamurthi* v. *Venkayya*[3], it was held that where a grant was of 8 acres for services rendered, with the grantee having powers of alienation and hereditary enjoyment and a small Kattupadi was fixed and the proprietors had at no time any right to land, the grantee was a "landholder" within the meaning of the Act. It was held in *Madura Sri Meenakshi Devasthanams* v. *Sellathayee*[4], that the provisions of section 24 of the Act prohibiting an enhancement of rent do not apply to cases where a right to remission does not continue. It was further held that section 26 (3) of the Act could be applied to a Devasthanam as a trustee is a "landholder" within the meaning of section 3 (5) of the Act and whenever there is a change of the trustee there is technically a change of landholder with the result that a new trustee would have a right to invoke section 26 (3) and to claim that he is not bound by any remission granted by his predecessors. In *Krishnamma Naidu* v. *Venkapathi Naidu*[5], where a landlord brought suits against his tenants under section 77 of the Act claiming rent also for excess arrears said to be in the holding of the tenants it was held that as under clause (3) of section 42 of the Act the agreement should be an express one, in its absence the suits had to be dismissed. But this would not mean that he would be precluded from taking appropriate steps under clauses (1) and (2) of the same section. In *Anaharachariar* v. *Kanakayya*[6], a Bench to whom the case was referred by a single Judge, held that having regard to the general scheme and policy of the Act and, in particular, to the object of section 213 of the Act, a suit by a ryot for recovering sums unlawfully collected from him by the landholder by abuse of the process provided by the Act falls under section 213. The suit whether it be called one for money had and received or one for compensation or one to enforce the obligation declared by section 72 of the Contract Act, is one for damages under section 213 and no Civil Court can take cognizance of such a suit. It was further held that section 136 of the Act does not cover excessive collections of rent.

LAND ACQUISITION ACT.—The decision in *Radhakrishna Chettiar* v. *The Province of Madras*[7], lays down that the proper method of valuation to be adopted in the case of compulsory acquisition relating to a house and ground situated in a Municipality and fetching a regular income is to assess the value on the basis of capitalisation of the net annual income. The number of years' purchase to be adopted for capitalisation has according to the decision to be arrived at by taking into account the interest yielded by Government securities at the time of the notification under section 4 (1) of the Land Acquisition Act. In the case before the Court the annual rental value was capitalised at 33-1/3 years' purchase.

LAW OF CONTRACTS.—In *Parthasarathy Gupta* v. *The Calcutta Glass and Silicate Works, Ltd.*[8], the Court in deciding the question as to the place of suing for damages for breach of a contract held that in order to sustain a suit for damages for breach of contract, a part of the cause of action would arise at the place where performance of the contract is provided and that "performance of the contract" may consist in delivery as well as payment of the price. The Privy Council had to consider in *Raja of Venkatagiri* v. *Raja Rao Sri Krishnayya Rao*[9], whether a promissory note executed for money advanced for defending a litigation in pursuance of an undertaking given by the father of the promisee to the father of the promisor and not volun-

1. (1948) 2 M.L.J. 52 (P.C.).
2. (1948) 2 M.L.J. 259.
3. (1948) 2 M.L.J. 268.
4. (1948) 2 M.L.J. 592.
5. (1948) 1 M.L.J. 359.
6. (1948) 1 M.L.J. 251.
7. (1948) 2 M.L.J. 159.
8. (1948) 2 M.L.J. 101.
9. (1948) 2 M.L.J. 260 (P.C.).

tarily or at the desire of the promisor was supported by consideration and whether the promisee could rely on section 25 (2) of the Contract Act. Their Lordships held that as the moneys were advanced not as the result of the importunity of the promisor but because of the undertaking given by the father of the promisee to the father of the promisor, that will not be "consideration" within the meaning of section 2 (*d*) of the Contract Act to support the promissory note. It was further held that the promisor was not precluded by any provision or principle of law from saying that the consideration stated in the promissory note was past consideration which not having moved at the " desire " of the promisor (*i.e.*) himself, does not fall within section 2 (*d*) of the Contract Act. As regards the applicability of section 25 (2), it was held that the promisee could not rely on it because to invoke its aid it must be shown that there was a promise by the promisor to " compensate " the promisee or his father for something which had been already done by them " voluntarily " for him. In *Venkata Subbayya* v. *Attar Sheik Mastan*[1], one of the parties to an agreement which was inherently illegal and opposed to public policy sought the assistance of the Court to obtain relief under section 65 of the Contract Act. It was held that the parties being in *pari delicto* the Courts could render no assistance in enforcing the agreement. Their Lordships of the Privy Council in *Govindram Seksaria* v. *Edward Radborne*[2], approved of the comment made by Stone, C.J., upon section 65 of the Contract Act that " compensation for an advantage may appear to be a contradiction in terms, since compensation connotes a measure of loss or damage and not the value of an advantage. It should be noted that in section 56 the expression used is " compensation for any loss " and that under section 64 the party rescinding the contract is to restore "any benefit". Under section 65 the alternatives are to restore any advantage "or to make compensation for it to the person from whom he received it." This must mean valuing or quantifying in money the advantage retained, if retained it be." In that case the contract for the sale of machinery " became void " on the outbreak of war after part of the machinery had been delivered and part payments had been made. In considering the claim to recover the balance of the value of the machinery delivered in excess of the price paid, their Lordships laid down the principles which should guide the Courts in deciding such a claim. Where a Railway Company sought to recover from a Municipality the cost of the widening of a culvert situated within its limits, which the company was ordered to do by a requisition by the Provincial Government it was pointed by their Lordships of the Privy Council in *Governor-General in Council* v. *Municipal Council, Madura*[3], that the company could not succeed for the reason, that though the work might have been lawfully done and was not intended to be done gratuitously, it could not, in the circumstances, be said that it was done for the Municipality or that the Municipality enjoys the benefit of it within the meaning of section 70 of the Contract Act. In *Jayaraghavan* v. *The Leo Films*[4], it was remarked that by section 73 of the Contract Act in the absence of proof of damage, nominal damages are not recoverable, and that proof of damage is necessary to enable recoverability. In *Dasappa* v. *Gopala Krishna Co.*[5], the question arose whether a surety for the sum that may be decreed against a judgment-debtor is released from his liability by reason of the judgment-debtor obtaining a stay of execution of the decree passed subsequently against him on his furnishing security. It was held that there was no time given by the decree-holder within the meaning of section 135 of the Contract Act and that as the security given by the judgment-debtor (a portion of which was given up by the decree-holder) came into existence after the suretyship obligation, it could not be postulated that the decree-holder did anything which was inconsistent with his duties to the surety within the meaning of section 139 of the Contract Act. It was pointed out that section 139 must be read with section 141 and not in such a way as to abrogate it when it applies.

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1. (1948) 2 M.L.J. 198.
2. (1948) 2 M.L.J. 1 (P.C.).
3. (1948) 2 M.L.J. 546 (P.C.).
4. (1948) 1 M.L.J. 209.
5. (1948) 2 M.L.J. 312

COMPANY LAW.—In *The Coimbatore Transport Ltd.* v. *The Governor-General in Council*[1], it was held that the Governor-General in Council was entitled to apply for and obtain an order for the compulsory winding up of a company where it is unable to pay a very large sum lawfully due and payable by it as and for income-tax. It was further held that the mere existence of a dispute as to the assessments which had not been fully determined would not render an application for compulsory winding up, an abuse of the process of Court. In *Sivagnanammal* v. *Thirumagal Mills Ltd.*[2], it was held that where a company decides to capitalise its profits and issues fully paid-up bonus shares to the shareholders, the sums represented by those shares are in the nature of capital and cannot be treated for any purpose as income and that accordingly a life tenant under a bequest only to the income of the ordinary shares has no right to such bonus shares and so cannot ask for a direction to the company to rectify its register of members, so as to include in it the name of the life tenant as being a member of the Company holding the bonus shares.

SPECIFIC RELIEF.—In *Kandaswamy Chettiar* v. *Shanmugha Thevar*[3], it was held that a clause in an agreement of sale of immoveable property to the effect that in case of default in completing the sale within a specified date the defaulter was to pay a specified sum as damages and that the contract was to become void cannot be availed of by the defaulting party to resist a claim for specific performance of the contract to sell. He cannot take advantage of his own wrong. An averment that the plaintiff had no objection to perform the contract in accordance with the decision of the Court was held in *Arjuna Mudaliar* v. *Lakshmi Ammal*[4], to be a sufficient averment of his readiness and willingness to perform his part of the contract. It was also held in that case that the delay which would preclude a plaintiff from obtaining specific performance must be such that it may be properly inferred that the plaintiff has abandoned his right or on account of the delay there must have been such a change of circumstances that the grant of specific performance would prejudice the defendant. The question whether a co-owner can maintain against another co-owner a suit under section 9 of the Specific Relief Act though discussed in *Molla Madina Saheb* v. *Bhano Bibi Saheba*[5], was not actually decided. In *Ranganathan Chetty* v. *Kanakaratnamma*[6], it was held that section 27-A of the Speicific Relief Act would not help a plaintiff suing for specific performance of an unregistered agreement to lease of a premises for 26 months on a rental of Rs. 85 per month when the plaintiff had never been in possession of the premises at all nor done any act in furtherance of the agreement to lease.

STAMP LAW.—In *Yerri Swami* v. *Chinna Vannurappa*[7], it was held that where a promissory note not properly stamped is admitted in evidence tentatively to decide an issue in the first instance, there is no admission of the document within the meaning of section 36 of the Stamp Act so as to preclude the other party from raising the question of the insufficiency of the stamp at a later stage when the whole case is remitted to the lower Court for trial by the appellate Court when it reverses the decision of the trial Court on the issue decided in the first instance.

COURT-FEES.—In *Subramaniam* v. *Narayanamma*[8], it was held that in a suit relating to agricultural land the income for the "year" before the filing of plaint for purposes of court-fee and jurisdiction is to be computed for the revenue year or the agricultural cultivation year and not the calendar year. Where the adequacy of the Court-fee paid has once been decided by a judicial officer, it was held in *Kadambalithaya* v. *Hebbara*[9], that it could not be re-opened by a succeeding judicial officer and that any error committed by the judicial officer in deciding the question of court-fee could only be corrected under section 12 (2) of the Court-Fees Act.

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1. (1948) 1 M.L.J. 407.
2. (1948) 2 M.L.J. 496.
3. (1948) 2 M.L.J. 356.
4. (1948) 2 M.L.J. 271.
5. (1948) 2 M.L.J. 453.
6. (1948) 2 M.L.J. 189.
7. (1948) 2 M.L.J. 254.
8. (1948) 2 M.L.J. 523.
9. (1948) 2 M.L.J. 553.

In *Polammal* v. *Rathna Mudaliar*[1], it was held that in a suit for specific performance of a contract of sale with alternative prayer for refund of advance paid and for damages separate court-fee for the alternative reliefs was not necessary. Where a suit was for a declaration that a plot was trust property and that its alienation was void and for a consequent injunction to restrain the alienees from interfering with the rightful possession of the plaintiff, it was held in *Thirupathaiah* v. *Mangapathi Rao*[2], that the proper court-fee to be paid would be for two separate declarations with one consequential relief by way of injunction. It was further held that the plot though trust property had a market value. In *Vaiyapuri Vathiar* v. *Soumianarayana Iyengar*[3], it was held that in a suit for declaration, injunction and accounts regarding temple property, the plaintiffs were bound to pay Court-fee under the proviso to section 7 (*iv*) (c) of the Court-Fees Act as amended in Madras only on the value of the immoveable property forming the subject-matter of the suit and that where the land consisted of inam land falling under section 7 (*v*) (c) the fact that there were cocoanut trees on the land was no ground for requiring the land to be valued otherwise than on the basis of fifteen times the net profits. It was held in *Vannappan* v. *Sinnathayee*[4] that a will was not a document " securing money or other property " within the meaning of section 7 (*iv-A*) of the Court-Fees Act as amended in Madras and as such a person suing for a declaration that the will of a deceased was not true in fact and was at any rate invalid in law is not bound to pay court-fee under section 7 (*iv-A*) on the market value of the properties forming the subject matter of the will. In *Sahul Hameed Rowther* v. *Mohideen Pichai*[5] it was held that a plaintiff who alleges that a sale deed executed by him was sham and nominal and prays for a declaration to that effect and for injunction restraining the defendant from interfering with the plaintiff's possession need not pray for cancellation of the sale deed and to value his suit for purpose of Court-fee and jurisdiction under section 7 (*iv-A*) of the Act. In *Kandaswami Udayan* v. *Annamalai Pillai*[6], where the sons sued for partition and possession of family properties alienated by their father, it was held that by filing the suit the plaintiffs had elected to treat the alienation as not binding on them and that the suit was in substance one for possession falling under section 7 (*v*) of the Court-Fees Act and so the plaint was not leviable to court-fee under section 7 (*iv-A*) as amended in Madras. In *Ghulam Dastagir Saheb* v. *Marudai Pillai*[7], it was held that where a new lessee of the property sues for recovery of possession of the property and impleads the landlord and the previous lessee whose lease has been terminated the suit is governed by clause (*xi*) (*cc*) of section 7 and that for the purposes of calculating Court-fee the Court should take into account only the rent payable to the landlord and not also the Government cist agreed to be paid by the tenant to the Government. In *Ramaswami Gupta* v. *Pasupathi Krishnayya*[8], it was held that in the case before the Court there were two separate and independent causes of action and two distinct reliefs which did not necessarily arise from the same subject-matter, namely a relief for recovery of the amount due under a promissory note and a claim for specific performance of an agreement to sell, and that the plaintiff was bound to pay Court-fees on the two reliefs as on " distinct subjects " within the meaning of section 17 of the Court-Fees Act. A plaint in a suit for possession by a private purchaser from a party to a suit after the dismissal of his application under Order 21, rule 97, was held in *Md. Ibrahim Sahib* v. *Krishna Rao*[9] to be leviable to a Court-fee as in an ordinary suit for possession on the market value of the property and that Article 17 (1) of Schedule II of the Court-Fees Act had no application to the case. In *Shanmugham Pillai* v. *Sri Sankaranarayanaswami Devasthanam*[10], it was held that a suit under section 44-B of the Madras Hindu Religious Endowments Act for a declaration that the order of a Collector directing resumption of inam is wrong requires when the lands are worth more

1. (1948) 2 M.L.J. 645.
2. (1948) 1 M.L.J. 269.
3. (1948) 1 M.L.J. 193.
4. (1948) 1 M.L.J. 455.
5. (1948) 1 M.L.J. 270.
6. (1948) 2 M.L.J. 130.
7. (1948) 1 M.L.J. 338.
8. (1948) 2 M.L.J. 104.
9. (1948) 2 M.L.J. 480.
10. (1948) 2 M.L.J. 637.

than Rs. 10,000 a Court-fee of Rs. 500 under Article 17-A of Schedule II of the Court-Fees Act and it cannot be filed with a Court-fee of Rs. 15 under Article 17 (i) of Schedule II of the Court-Fees Act. In *Venkamma* v. *Venkataramayya*[1], it was held that in a suit for declaration that the plaintiffs are the nearest reversioners of a deceased Hindu and that the sale deed executed by his widow is not binding on them, a separate Court-fee of Rs. 100 is payable under Article 17-A of the Court-Fees Act on each of the declarations in the plaint.

LIMITATION.—In *Thokkudubivyanu* v. *Immaniyelu*, In re[2], a petition for review of Judgment, the time for filing which expired during vacation of the High Court was filed only on the day when the judges sat for judicial work, though the Court was open on an earlier day for receiving papers. It was held that according to section 4, Limitation Act, it was barred as being presented out of time. A direction in a settlement that the surplus after meeting the expenses on certain religious purposes shall be applied for the benefit of certain persons, was held in *Syed Abbas Saheb* v. *Syed Amir Haniza Saheb*[3], to be a direction for the distribution of the surplus in named proportions and was a "specific purpose" and that section 10 of the Limitation Act would therefore be applicable to a suit by the persons entitled to the distribution of the surplus. In *Ramaiya* v. *Suryanarayana*[4], it was held that section 15 of the Limitation Act could not be invoked where the institution of the suit in question was not stayed by an injunction order in other proceedings. An admission of liability contained in a statement in a document, if coupled with a statement that the liability has been discharged, was held in *Karamadai Naicken* v. *Raju Pillai*[5] not to amount to an acknowledgment of a subsisting liability so as to save limitation under section 19 of the Limitation Act. In *Mohammad Akbar Khan* v. *Musammat Motai*[6], the Judicial Committee in considering the scope and applicability of section 20 of the Limitation Act with reference to a usufructuary mortgage held that the wording of the section was clear and that it applied only to extend the time for the recovery of the mortgage debt and that it made no reference to the right of redemption and that hence, to extract from it an extension of time for redemption would involve reading into the section something which was not there. Article 23 was held in *Nagappa Chettiar* v. *Trojan & Co.*[7], to be inappropriate to govern a case of a suit for damages for presenting an insolvency petition against the plaintiff, maliciously and without reasonable and probable cause, because the word "prosecution" in that article related to a case where the criminal law is set in motion. It was further held that Article 36 would be the more appropriate article to apply to such a case and that it could not be said that the two years' period commences from the date of the filing of the petition. Before a cause of action can arise in respect of an order of a competent Court the order must have been set aside and so time will begin to run only from that date. In *Hafiz Mohammed Fateh Saheb* v. *Sir Swarup Chand Hukum Chand*[8], it was held by the Privy Council that possession necessary to found a title by adverse possession under section 28 of the Limitation Act was not different in character (though it may be in duration) from the possession required to prevent limitation from running under Article 142 or Article 144. They laid down the tests to be applied in regard to the determination of the nature of the acts of possession and also pointed out the difference in this matter between a trespasser and a purchaser put in possession by an order of Court. In *Suryaprakasa Rao* v. *Maharaja of Pithapuram*[9], their Lordships of the Judicial Committee held that Article 109 would be inapplicable to a suit by the person who is ultimately found to be entitled to an estate to recover the rents and profits received by a party to that litigation who was recognised by the Collector under section 3 (5) of the Madras Estates Land Act as a "land-holder," the reason being that the receipt of rents and profits by the statutory land-holder could not be said to be "wrongful".

1. (1948) 2 M.L.J. 651.
2. (1948) 1 M.L.J. 49.
3. (1948) 1 M.L.J. 469.
4. (1948) 2 M.L.J. 314.
5. (1948) 2 M.L.J. 454.
6. (1948) 1 M.L.J. 130 (P.C.).
7. (1948) 1 M.L.J. 173.
8. (1948) 2 M.L.J. 70 (P.C.).
9. (1948) 2 M.L.J. 52 (P.C.).

It was further held that the right of action to recover such rents and profits would accrue only after the order of the Collector under section 3 (5) is cancelled as a result of the ultimate decision of the Civil Courts and that the plaintiff could not have competently sued the statutory holder for an account of rents and profits each time that rents or profits were received. In *Viswanatham* v. *Balarami Reddi*[1], it was held that a suit against a tenant holding over and continuing in possession for rent would be governed by Article 110. Even if it was assumed that the defendant was in permissive possession of the land and the action against him is one for damages for use and occupation such an action would be governed by Article 115 and not by Article 120, for the action is really based on an implied contract to pay rent and not either on tort or on a statutory obligation. *Ayissa* v. *Kunhaikalanthan*[2], discusses what a plaintiff suing in ejectment on the strength of his title and dispossession should prove and holds that he should establish not only title but also possession within 12 years prior to the suit. When this is proved as required by Article 142, in order to establish prior possession within the meaning of the first column of the article, it is permissible to invoke the aid of the presumption of possession following title which was held to be only a mode of proving prior possession as required by Article 142. In *A. M. A. Firm* v. *Marudachalam Chettiar*[3], the question considered was as to the proper article applicable to a suit by a mortgagee purchaser in execution of the decree on the earlier mortgage who had not been impleaded in a suit by a Municipality to enforce the first charge for property tax under section 85 of the District Municipalities Act. It was held that the Municipality was in the position of a first mortgagee and the sale in pursuance of the charge has not the effect of annulling the prior encumbrances and the mortgagee purchasers on the early mortgage who had not been impleaded in the suit of the Municipality are not barred from proceeding with a suit to enforce the right of redemption under section 91 of the Transfer of Property Act against the purchasers of the property in the sale in execution of the charge decree and that such a suit will be governed by Article 148. It was pointed out that Article 132 would have no application as the suit will not be one for the payment of money. In *Chandrakantam* v. *Chandramouli Prasada Rao*[4], it was pointed out that in view of the decision of the Full Bench in *Ramasubramania Pattar* v. *Karambil Pati*[5], it was impossible to hold that an application for the ascertainment of mesne profits and for the passing of a final decree comes under Article 181 and that it must be filed within three years from the date of the passing of the preliminary decree. An application under Order 20, rule 12, Civil Procedure Code filed in 1945 in respect of a preliminary decree for partition passed in 1937 was held to be not barred even though the decree provided that the mesne profits due to the plaintiff " be determined in a separate petition by the plaintiff in execution." The words " final order " in Article 182 (5) was held in *Nagappa Chettiar* v. *Lakshmanan Chettiar*[6], to imply that the proceeding has terminated so far as the Court passing it is concerned and that hence where the order was made on the memorandum of consent signed by the parties and their advocates and the formal order recited that the execution petition came before the Court to be mentioned as " settled ", there was a final disposal of the execution petition and that the inclusion in the order of such words as " dismissal " or " final disposal " were unnecessary. In *Muthuvenkata Reddiar* v. *Thangavel Chetti*[7] an order on an execution petition filed within three years but re-presented after the expiry of the period fixed for re-presentation without a petition to excuse the delay would be a " final order " within the meaning of Article 182 (5). A formal petition to excuse the delay in re-presentation was considered unnecessary and that the making of the order of dismissal reflects that there was an order excusing the delay. The rejection of an unnumbered petition re-presented long after its return was held not to be a " final order " in *Kuppuswami Nainar* v. *Rangaswami*

1. (1948) 2 M.L.J. 542.
2. (1948) 1 M.L.J. 194.
3. (1948) 1 M.L.J. 284.
4. (1948) 2 M.L.J. 206.
5. (1940) 1 M.L.J. 54 : I.L.R. 1940 Mad. 372 (F.B.).
6. (1948) 1 M.L.J. 350.
7. (1948) 1 M.L.J. 327.

Goundan[1], so as to save limitation for a fresh execution petition. In *Veerabadriah* v. *Seshiah*[2], the decision in *Muthuvenkata Reddiar* v. *Thangavel Chetti*[3], was applied and it was held that the order dismissing an unnumbered execution petition which had been returned but re-presented after time allowed for carrying out certain requirements would be a "final order" within the meaning of Article 182 (5). There appears to be a necessity for an authoritative decision on this point. In *Arunachala Mudaliar* v. *Rajagopala Chetty*[4], the Court held that all that the law requires is there should be a step-in-aid of execution and is not concerned with the question whether the step ultimately turns out to be infructuous or a wrong step. Applying that principle it was held that an application *bona fide* asking for transmission of the decree under a mistake as to the jurisdiction of the Court in regard to the property sought to be proceeded against would be an application in accordance with law and a step-in-aid of execution. Where an execution petition claims an amount in excess of what was rightly due under the decretal order, it was held in *Gopalan* v. *Travancore National and Quilon Bank, Ltd.*[5], that it cannot be said that the application was not in accordance with law. The use of the word "recorded" on an execution application was held in *Govindarajulu Naidu* v. *Lakshmana Aiyar Firm*[6], not to amount to a final disposal of the application. In *Chimman Chettiar* v. *Estate Manager, Sivaganga Estate*[7], it was held that an application for execution presented against a deceased judgment-debtor by mistake due to negligence, but honestly made, was a *bona fide* mistake and that the application though it could not be acted upon by the executing creditor would be an effective step-in-aid for the purpose of saving limitation. In *Venkata Lakshminarasimham* v. *Gomaji & Co.*[8], it was pointed out that Article 182 (5) did not permit any differentiation between an application for execution of a decree and an application to take a step-in-aid of execution and that the starting point of limitation in any case would be the final order passed on the application and not the date on which it was filed. It was also held that an execution application which is returned by the Court, but never re-presented thereafter should be treated as if it had never been presented at all. Where the intervening applications between the earliest and the latest execution applications are essentially different in character from the earliest one, the later application cannot be treated as a continuation of the earliest application. In *Rachapudi Ranga Rao* v. *Subba Rao*[9], was held that an execution application filed by an assignee-decree-holder to a Court before his assignment was recognised and the decree was transferred to it for execution was not a proper application made to a proper Court.

Civil Procedure.—The largest number of cases decided in a year is under the Civil Procedure Code and cover fairly all the important provisions of the Code. The provisions of the Civil Procedure Code were held in *Devichand Moolchand* v. *Dhanraj Kantilal*[10], not to apply to proceedings under the Madras Buildings (Lease and Rent) Control Act and following *Abdul Khadir Hadgiar* v. *A. K. Murthy*[11] and expressing regret at the Civil Procedure Code not having been made applicable to such proceedings, the desirability of making rules making at least some of the important provisions of the Civil Procedure Code applicable to such proceedings was pointed out. An order on an application for stay was held in *Veeraraghavayya* v. *Rattamma*[12], would be a decree within the meaning of section 2(2), Civil Procedure Code, whether the order directs that execution shall be stayed or that execution shall proceed and is hence appealable. *Venkata Jagannadha Rao* v. *Venkatachalamayya Sastri*[13], decides a question as to *res judicata* among co-defendants. There, in a suit on a mortgage to which the mortgagor and his sons as also a subsequent mortgagee were made defendants, on a contest between the prior and subsequent mortgagees, the subsequent mortgage was also found to be valid and binding on the mortgagor's sons and the amount due was also ascertained. This decision was held would

1. (1948) 2 M.L.J. 374.
2. (1948) 2 M.L.J. 369.
3. (1948) 1 M.L.J. 327.
4. (1948) 1 M.L.J. 389.
5. (1948) 2 M.L.J. 113.
6. (1948) 1 M.L.J. 437.
7. (1948) 2 M.L.J. 377.
8. (1948) 2 M.L.J. 488.
9. (1948) 2 M.L.J. 461.
10. (1948) 1 M.L.J. 276.
11. (1947) 2 M.L.J. 482.
12. (1948) 1 M.L.J. 425.
13. (1948) 1 M.L.J. 4.

operate as *res judicata* in a later suit on his mortgage by the subsequent mortgagee. The determination of the questions in the early suit was necessary both in view of the provisions of Order 34, rules 1 to 4, Civil Procedure Code as also " in order to give the plaintiff the relief which he claimed." Where there was an adjudication of title to property based on a settlement, it was held in *Narayanaswami Naidu* v. *Parvathi Bai*[1], that that decision would operate as *res judicata* in a subsequent suit by the children of one of the parties to the prior suit and that Explanation 6 to section 11, Civil Procedure Code would apply. A Bench to which the case was referred had to consider in *Seshagiri Rao* v. *Somasundaram*[2] the competency of a District Judge to transfer a case remanded by the High Court to the Court of a Subordinate Judge. Their Lordships accepted as correct the law as laid down in *Singamsetti Venkataiah* v. *Bopalla Chiranna*[3], that though the decree of the High Court may remand a suit or appeal for disposal by a particular Court, the District Court can exercise the power under section 24, Civil Procedure Code and transfer the suit to any other competent Court for disposal. They explained the decision in *Uthuman* v. *Naina Mahomed*[4], and held that there was no conflict between the decisions considered. An application under section 24 for transfer of a suit to High Court was held in *Subba Reddi* v. *Narayanaswami Reddi*[5], to be in the nature of an original proceeding within the meaning of section 141, Civil Procedure Code and that the procedure of the Court in regard to suits become applicable thereto and hence the High Court will have power to appoint a receiver before the transfer of the suit. In *Nagappa Chettiar* v. *Lakshmanan Chettiar*[6], it was pointed out that the Court which passed the decree has no jurisdiction to entertain an execution application after the decree has been sent to another Court for execution. An order settling the proclamation of sale being an administrative order was held to be not appealable in *Rangachariar* v. *Trinity Bank, Ltd.*[7], without deciding the question whether the matter in dispute being between the judgment-debtors, section 47 would be applicable. Where the last day of the 12 years period fixed in section 48, Civil Procedure Code expired on a sunday it was held in *Rutnaswami Padayachi* v. *Kuppuswami Aiyar*[8], that the execution application filed on the next day was not barred on the principle that a party should not suffer where he is prevented from doing a thing by the act of the Court. In *Rajam Naidu* v. *Meenakshi Ammal*[9], it was held after considering the Privy Council decision in *Raja Krityanand Singh* v. *Raja Prithichand Lal Chowdhury*[10], that section 48 would apply to the liability of the surety under section 145, Civil Procedure Code. The starting point would depend on whether the liability is an absolute one or a contingent or conditional one. The criterion date of the decree for the purposes of section 48, Civil Procedure Code was held in *Lakshminarasinga Rao* v. *Balasubramanyam*[11] to be the date on which the decree becomes operative, namely, that on which the plaintiff is at liberty to file an execution petition to enforce a relief which the Court has granted him. Failure to apply for execution of an executable preliminary decree (for example, money reliefs) within 12 years of the decree would bar the decree-holder from enforcing it subsequently. The scope and effect of section 53 was laid down by the Privy Council in *Rao Bhimsingh* v. *Shersingh*[12]. It was said therein that section 53 was designed to enlarge the class of property liable to execution under sections 50 and 52 and that this is effected by deeming certain property to have come into the hands of the legal representative as property of the deceased which in fact had not done so. On the question which arose in that case, namely, whether an estate which is impartible, and governed by the rule of primogeniture and which is ancestral property which had been attached during the life-time of the holder in satisfaction of a decree against him for compensation in lieu of specific performance remains

1. (1948) 2 M.L.J. 211.
2. (1948) 1 M.L.J. 315.
3. (1914) M.W.N. 317.
4. (1922) 44 M.L.J. 238.
5. (1948) 2 M.L.J. 251.
6. (1948) 1 M.L.J. 350.
7. (1948) 1 M.L.J. 61.
8. (1948) 2 M.L.J. 234.
9. (1948) 2 M.L.J. 215.
10. (1932) 64 M.L.J. 599 : L.R. 60 I.A. 43 : I.L.R. 12 Pat. 195 (P.C.).
11. (1948) 2 M..L.J. 249.
12. (1948) 1 M.L.J. 154 (P.C.).

liable after his death to execution in the hands of his eldest son who has succeeded by survivorship, it was held that the son was the legal representative of the last-holder and the decree-holders were entitled therefore under section 50, Civil Procedure Code to apply to the Court to execute the decree against him with reference to the property in his hands which was liable in execution under section 50. Arrest and detention of civil debtors can be ordered according to *Venkata Subba Rao* v. *Sreeramulu*[1] only where the conditions prescribed in section 51 are strictly satisfied and that reasons must be given everytime a man is ordered to be arrested and in every proceeding where he is ordered to be arrested, even if it is on the same day. It follows that if an order for arrest is made without giving reasons, the Court acts without jurisdiction. In settling the scheme for the administration of a charitable trust involving the appointment of trustees or managers, it was pointed out by the Privy Council in *Guru Shidharudhaswami* v. *Gangadharappa Divate*[2], that it cannot be contended that the Court has no jurisdiction to remove a person nominated as the head of a Math by will by his predecessor when it is found as a fact that that person has by his conduct shown himself unfit for such position. On the important question as to the right of appeal in cases arising under special Acts the Privy Council laid down in *Adaikappa Chettiar* v. *Chandrasekhara Tevar*[3], that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute, the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal. After stating the general principle it was held overruling the Full Bench case in *Nagappa Chettiar* v. *Annapurni Achi*[4], that an order dismissing an application under section 19 of the Madras Agriculturists' Relief Act for the amendment of the decree in a mortgage suit was a decree within the meaning of section 2 (2), Civil Procedure Code and that an appeal lay against it under section 96, Civil Procedure Code, even though the Madras Agriculturists' Relief Act conferred no right of appeal from an order of the Court made under section 19 of the Act. In considering an application for leave to appeal under sections 109 (*c*) and 110, it was remarked in *Ramachandra Rao* v. *Narayana Rao*[5], that every question of law is not substantial and that "substantial" in the context in which it is used in section 110, Civil Procedure Code means substantial as between the parties and not necessarily of general importance to the public; but it does not make it any the less essential, that the question should be substantial, that is to say, it must have some substance in it. It was held that a decision on the question of the admissibility of a document does not make it *ipso facto* a substantial question of law. The Privy Council had to consider the applicability of section 110, Civil Procedure Code in *Pethu Reddiar* v. *Rajambu Ammal*[6] to the case of leave granted to three vendees only where the High Court decreed the suit setting aside fourteen sales and a power of attorney and where the value of the subject matter of suit as well of the appeal was over Rs. 10,000. Negativing a contention that for the purposes of section 110, the case of each appellant must be regarded *separately*, it was held that on the facts of the appeal there was but one "matter in dispute" and that the mere circumstance of a plurality of appellants could not make it otherwise and that it was unnecessary to consider the applicability of section 110. It was said in *Adaikappa Chettiar* v. *Chandrasekhara Tevar*[3] that there is no jurisdiction in revision where an appeal lies. That no revision could be entertained by the High Court under section 115, Civil Procedure Code against an order passed on appeal by an appellate authority appointed under section 12 of the Madras Buildings (Lease and Control) Act as a *persona designata* and not a Court was held in *Chinniah Thevar* v. *F. M. Badsha*[7]. It was ruled in *Molla Madina Saheb* v. *Bhano Bi Bi Saheba*[8], that in a revision against a decree under section 9 of the Specific Relief Act, a new point as to the main-

1. (1948) 2 M.L.J. 648.
2. (1948) 2 M.L.J. 450 (P.C.).
3. (1948) 1 M.L.J. 41 (P.C.).
4. (1941) 1 M.L.J. 164 : I.L.R. 1941 Mad. 26 (F.B.).
5. (1948) 2 M.L.J. 109.
6. (1948) 2 M.L.J. 25 (P.C.)
7. (1948) 1 M.L.J. 314.
8. (1948) 2 M.L.J. 453.

tainability of the suit cannot be allowed to be raised for the first time. An application to amend the description of an item of property in the plaint schedule and the decree schedule in a suit which was ultimately disposed of by the High Court was held in *Katamraju* v. *Paripurnandam*[1] would be covered by the wide language of sections 152 and 153 as the error had crept into the decree by way of clerical mistake or accident. In deciding as to what constitutes a misjoinder of parties and causes of action, the Court held in *Nilakanta Iyer* v. *Ramanarayana Iyer*[2], that Order 2, rule 3, should be read with Order 1, rule 3 and that in such a matter the Court should be guided principally by the averments in the plaint. The duty of a Court dealing with an application under Order 1, rule 8, was pointed out in *Mohd. Hassan Sahib* v. *Podanur Sunnath Jamath*[3]. The Court has to decide the question as to whether plaintiff's request was a *bona fide* one and they were agitating a proper claim. If the request is *bona fide* and the claim a proper one leave should be granted. A Court would not be justified in refusing leave simply because the parties on both sides are equally balanced. In *Lakshmidevamma* v. *Nagayya*[4], in a suit by a widow against her husband's brothers for a declaration, it was held that an alleged adopted son of the plaintiff's husband would be a party whose "presence was necessary for the determination of the real matter in dispute" within the meaning of Order 1, rule 10, Civil Procedure Code. The Privy Council in *Mohamad Khalil Khan* v. *Mahbub Ali Mian*[5], held that the object of Order 2, rule 2, is to avoid splitting up of claims and to prevent multiplicity of suits and that the correct test in cases falling under Order 2, rule 2 is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. The meaning of "cause of action" is also explained. That the omission to sign or verify plaint as required by Order 6, rule 14, is not such a defect as could affect the merits of the case or the jurisdiction of the Court was held in *Subramania Pillai* v. *Sankara Pandian Pillai*[6]. The curing of such a defect would come within the provisions of section 99, Civil Procedure Code. Regarding amendment of pleadings there have been five decisions of our High Court during the year under review. In *Panchaksharam Pillai* v. *Rangaswami Pillai*[7], it was held that in a suit for possession of temple property transferred without authority it would be improper to refuse an amendment asking for cancellation of a sale deed. When an amendment sought ousts the pecuniary jurisdiction of a Court, the procedure to be followed is indicated in *Nandula Bhavani Shankaran* v. *Saladi Mangamma*[8]. The Judge should allow the amendment and then return it for re-presentation in the amended form to the higher Court having jurisdiction. In *The Province of Madras* v. *R. B. Poddar Firm*[9], it was held that where a Court allows an amendment which introduces a fresh cause of action which is outside the scope of the suit as originally framed and inconsistent with the allegation made earlier, it acts with material irregularity in the exercise of its jurisdiction and its order is liable to be set aside in revision. Where the object of an amendment is intended to get over a plea of limitation and to cure a defect, it was held in *Ramachandra Naidu* v. *KandaswamiMudaliar*[10], that the amendment should not be allowed. In *Dharmalingam Chetti* v. *A. M. Krishnaswami Chetty*[11], it was pointed out that when a Court has to decide whether an amendment of a written statement is to be allowed or not, that is not the stage when it can canvass the truth or falsity of the allegation in the proposed amendment and such allegation need not and should not be gone into then. Where there are laches, refusal of the amendment is too drastic a remedy. Saddling the party with costs is enough. Even if a plea in the proposed additional written statement is inconsistent with the original plea it was held in *Md. Ibrahim Maricar* v. *Ahmed Maricar*[12], that it can be allowed provided the Court considers it expedient to permit the raising of the plea at that particular stage. *Chinnappa Naidu* v. *Deena*

1. (1948) 2 M.L.J. 301.
2. (1948) 2 M.L.J. 504.
3. (1948) 1 M.L.J. 379.
4. (1948) 2 M.L.J. 362.
5. (1948) 2 M.L.J. 318 (P.C.).
6. (1948) 1 M.L.J. 227.
7. (1948) 1 M.L.J. 337.
8. (1948) 2 M.L.J. 412.
9. (1948) 2 M.L.J. 423.
10. (1948) 2 M.L.J. 577.
11. (1948) 2 M.L.J. 644.
12. (1948) 2 M.L.J. 576.

dayalu Naidu[1], decides that Order 9, rule 9, applies to voluntary as well as involuntary absences. Order 9, rule 9 was held in *Dakshinamoorthy Kandar* v. *Ponnuswami*[2], would not apply to a case where at an adjourned hearing the party appears in person and on refusal of an adjournment refuses to proceed with the case and it is dismissed. It was ruled in *Ayyalureddi* v. *Mallareddi*[3], that the bar applicable to suits under Order 9, rule 9, does not apply to applications made in execution of a decree and that a decree-holder whose execution application, has been dismissed for default is entitled with immunity to make any number of applications so long as they are in time. Order 9, rule 13, was held in *Krishna Udayan* v. *Chinna Pillai*[4], would apply to an *ex parte* order in a reference under section 30 of the Land Acquisition Act as it amounts to a decree and an application to set it aside would be competent. An application under Order 9, rule 13 would not according to the decision in *Manicka Goundan* v. *Krishna Goundan*[5], bar the right to have the decree set aside in revision. Order 16 of the Civil Procedure Code was held in *Viswanathan Chettiar, In re*[6] would govern the issue of summons under section 36 of the Presidency Insolvency Act. That a party can ask for a commission to examine a handwriting expert of his choice as a matter of right was laid down in *Subbaraya Padayachi* v. *Kozendaval Udayar*[7], as also that in this respect there is no difference between an ordinary witness and an expert witness. The meaning of the words " established public conveyance " in rule 19 (*b*) of Order 16 was explained in *Borrayya* v. *Ramakoti Sastri*[8], and it was held that it does not mean disconnected buses belonging to different private companies and plying on different routes and with no certainty of continuous travel. It was also held that any witness however important, is entitled to ask to be examined on commission if he lives beyond the 200 miles and the Court sees no fraud or *mala fides* in the application. The inapplicability of Order 21, rule 2, after a sale of the mortgaged property was pointed out in *Madhava Nayanar* v. *Parameswara Ayyar*[9]. In *Nookaratnam* v. *Venkata Suryanarayana*[10], it was pointed out that the word " wilfully " in Order 21, rule 32, cannot be construed as " unreasonable " and that the refusal of a wife to live with the husband (decree-holder) expressed in unequivocal terms is " wilful " within the meaning of Order 21, rule 32, and that the right of the decree-holder to execute the decree in the manner provided for cannot be denied. The scope and applicability of Order 21, rule 57, both before and after the amendment of the rule was considered in *Sabapathi Pillai* v. *Md. Ilais Sait*[11]. Settlement of a proclamation of sale under Order 21, rule 66 was held to be an administrative order in *Rangachariar* v. *Trinity Bank, Ltd.*[12], and that hence no appeal lay against such an order. In *Srinivasan* v. *Andhra Bank, Ltd.*[13], it was held that it was not obligatory upon the executing Court to embark upon an enquiry regarding the value of the property to be sold and insert such value in the proclamation of sale. By the enactment of new clause (*e*) to sub-section (2) of rule 66 of Order 21, Civil Procedure Code, it must be deemed that the residuary clause (*f*) is intended to cover matters other than the market value. In *Kandaswami Mudali* v. *Narasimha Iyer*[14], it was held that there is no warrant for limiting fraud to a fraud in conducting sale and that hence a sale contrary to agreement between decree-holder and person interested in the property would be fraud on the part of the decree-holder and where there is a sale for an undervalue, the sale is liable to be set aside even though the purchase by the auction purchaser was a *bona fide* one without notice of the fraud. In considering the maintainability of an application to set aside sale on the ground of scaling down of decree subsequent to sale it was pointed out in *Kumaraswami* v. *Mahalakshmamma*[15], that in deciding such a question the principle to be applied is to consider what would have been the position

1. (1948) 1 M.L.J. 411.
2. (1948) 1 M.L.J. 65.
3. (1948) 1 M.L.J. 381.
4. (1948) 1 M.L.J. 119.
5. (1948) 1 M.L.J. 574.
6. (1948) 1 M.L.J. 241.
7. (1948) 2 M.L.J. 567.
8. (1948) 2 M.L.J. 641.
9. (1948) 1 M.L.J. 68.
10. (1948) 2 M.L.J. 372.
11. (1948) 2 M.L.J. 352.
12. (1948) 1 M.L.J. 61.
13. (1948) 2 M.L.J. 569.
14. (1948) 1 M.L.J. 333.
15. (1948) 2 M.L.J. 232.

had the scaled down decree been pasesd by the Court in the first instance. In *Manickam* v. *Ramanathan Chettiar*[1], it was held that no question of abatement can arise in the case of Civil Revision Petitions, because Order 22 has not been made applicable to them by the Civil Procedure Code or the Appellate Side Rules and there is also nothing in Limitation Act making any of the Articles in schedule 1 applicable to Civil Revision Petitions. In *Sivagaminatha Pillai* v. *Venkitaswami Naicker*[2], it was held that it will be contrary to the letter as well as the spirit of sub-rule (2) of Order 23, rule 1, Civil Procedure Code to permit the plaintiff to institute a fresh suit on the same cause of action where after an appreciable portion of the material evidence has been adduced the plaintiff finds that the evidence is insufficient to establish the case propounded by him in the plaint. That the words "expenses of the commission" in rule 15 of Order 26, Civil Procedure Code can be made to include the expenses of the other party to the litigation was held in *Abdurahiman Settu* v. *Md. Kasam Settu*[3], and also that in suitable cases it can be ordered to be deposited by the party at whose instance the commission was taken out. Where the plaintiffs have sued the partnership in the name of the firm alone and service of summons is effected on one of the partners as provided by rule 6 of Order 30, the subsequent proceedings should continue in the name of the firm as was pointed out in *Vimala and Co.* v. *Sivam & Co.*[4]. The written statement filed by one of the defendants in his name should be taken to have been filed on behalf of the firm and not on behalf of that particular defendant. The powers of a Court under Order 32, rule 15 was explained in *Mohd. Ibrahim Ummal* v. *Sheik Mohd. Marakayar*[5]. It was said that the Court has jurisdiction in determining the question of unsoundness of mind to seek assistance of medical experts and it can compel the party to attend the Court for deciding the question. It can also direct the person alleged to be of unsound-mind to be subjected to the examination of the expert. On the question as to the proper procedure to be followed where an objection as to pecuniary jurisdiction is raised in an application for leave to sue in *forma pauperis*, two views have been taken. The decisions in *Periaswami Padayachi* v. *Ulaganathan*[6] and *Eswaramma* v. *Chinna Kota Reddi*[7], have held that it was competent for the Court to go into the question and decide it and return the plaint for presentation to the proper Court if it is beyond its jurisdiction. But the decision in *Venkatacharyulu* v. *Venugopalaswamivaru*[8], has held that it need not be so determined. The latter decision does not refer to the case law on the matter at all while the others have reviewed the case law and came to a conclusion. Where in an application for leave to sue as a pauper to set aside a compromise decree, the portion of property admitted to belong to the plaintiff under the compromise decree need not be taken into account because the subject matter of the suit is the compromise decree one and entire and it cannot be cut up into divisible parts. That is the effect of the decision in *Ponnambalam Pillai* v. *Panchaksharam Pillai*[9], The right of a respondent in an application for leave to sue as a pauper to show that the suit is barred either by *res judicata* or by limitation and to adduce evidence was recognized in *Mythili Ammal* v. *Mahadeva Iyer*[10]. The scope of the bar contained in rule 15 of Order 33 was discussed and explained in *Ananthanarayana Sarma* v. *Krishnamurthy Aiyar*[11]. It was pointed out that the right to sue in *forma pauperis* is a personal right of the individual who is given the leave to sue as a pauper and the bar imposed by rule 15 of Order 33 upon the unsuccessful applicant affects the applicant alone and does not extend to any other person, like his legal representatives who wishes to enforce his personal right to property by way of suit, after the death of the applicant. The imperative nature of rule 5, Order 34 was stressed in *Madhava Nair* v. *Parmeswara Iyer*[12], and it was pointed out that the sale cannot be set aside unless the decree amount is deposited in Court for satisfaction of the decree and that a payment or adjustment out of

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1. (1948) 2 M.L.J. 521.
2. (1948) 2 M.L.J. 367.
3. (1948) 2 M.L.J. 652.
4. (1948) 2 M.L.J. 477.
5. (1948) 2 M.L.J. 277.
6. (1948) 2 M.L.J. 150.
7. (1948) 2 M.L.J. 623.
8. (1948) 2 M.L.J. 570.
9. (1948) 2 M.L.J. 600.
10. (1948) 1 M.L.J. 400.
11. (1948) 1 M.L.J. 17.
12. (1948) 1 M.L.J. 68.

Court will not be compliance with the strict requirements of the Act so as to entitle the mortgagor to claim the benefit of rule 5 of Order 34. In *Venkatachalapathi Rao* v. *Kanchayya*[1], a judgment-debtor who had given security for any decree that may be passed against him was held not entitled to deposit the money and claim the benefit of rule 5 of Order 34, when there has been sale of the property given as security, as there was no decree based on a charge and execution in pursuance of such a decree resulting in the sale of the property. That Subordinate Courts have no inherent jurisdiction to grant a temporary injunction *ex debito justitiae* was laid down in *Kuppammal* v. *Seetharama Iyer*[2]. As pointed out therein, if a case cannot be brought within the four corners of Order 39, Civil Procedure Code the inherent jurisdiction of the Court cannot be invoked to add to the powers thus conferred. This was affirmed in *Subramanian* v. *Seetharama Iyer*[3], where it was held the High Court sitting as an appellate Court hearing appeals from a subordinate Court has no inherent jurisdiction to issue injunction apart from Order 39, Civil Procedure Code. It was also held that proceedings in execution of a compromise decree would not amount to committing an injury within the meaning of rule 2 of Order 39. When an application is made to the High Court under section 24, Civil Procedure Code for transfer of a case to itself it is in the nature of an original proceeding and the provisions of Order 40, rule 1 would be attracted to it by section 141, Civil Procedure Code. On this reasoning it was held in *Subba Reddi* v. *Narayanaswami Reddi*[4], that the High Court will have power to appoint a receiver before the transfer is ordered and after the other side has been served with notice of the transfer petition. In *Ramakrishna Aiyar Dharmam* v. *Umar Salai Mohammed Sait*[5], it was pointed out that it is necessary that special circumstances should exist before an order for security should be directed under Order 41, rule 10 in an appeal in *forma pauperis* and the circumstances in that case were held to fall under the special grounds for a Court ordering security. That the mere fact that additional evidence was tendered before the appellate Court would not justify any remand of the case is what was held in *Srimannarayana Charyulu* v. *Bhavanacharyulu*[6], and *Sri Agneswara Devasthanam* v. *Govinda Pandithan*[7]. When the power of an appellate Court to order remand was to be exercised was laid down in *Veeramma* v. *Lakshmayya*[8]. Under rule 23 of Order 41 the appellate Court can remand a suit, if in reversing or setting aside the decree it considers it necessacy in the interests of justice to do so. It is only when the appellate Court finds it necessary to reverse or set aside the decre that it is entitled to remand the suit. A remand on the ground that the judgment contravened the provisions of rule 5 of Order 20, Civil Procedure Code was held to be not justified. *Venkatarama Aiyar* v. *Unnamalai Ammal*[9], is an important decision where it was held that where a party does not signify his intention of appealing against an order of remand by applying for stay, he cannot appeal against it after the decision at the rehearing on remand. The Privy Council in *Mohammed Akbar Khan* v. *Musammat Motai*[10], lays down the limits to the powers of an appellate Court to admit additional evidence. They say that the power of an appellate Court to admit further evidence under Order 41, rule 27 1 (*b*) is confined to cases in which the Court requires any document to be produced or any witness to be examined to enable him to pronounce judgment or for any other substantial cause. They add that the Court would not be justified in admitting additional evidence where the effect would be to allow the party concerned to fish out evidence in order to prove his case and make up the lacuna in the existing evidence. In *Srimannarayana Charyulu* v. *Bhavana Charyulu*[6], it was pointed out that under Order 41, rule 27, whenever additional evidence is allowed to be produced by an appellate Court, it is bound to record its reasons for its admission and further, the clauses (*a*), (*b*), (*c*) of rule 1 must be considered to find out whether a case is made out for admitting additional evidence.

1. (1948) 2 M.L.J. 185.
2. (1948) 1 M.L.J. 355.
3. (1948) 2 M.L.J. 188.
4. (1948) 2 M.L.J. 251.
5. (1948) 2 M.L.J. 362.
6. (1948) 1 M.L.J. 336.
7. (1948) 2 M.L.J. 413.
8. (1948) 1 M.L.J. 427.
9. (1948) 2 M.L.J. 404.
10. (1948) 1 M.L.J. 130 (P.C.)

An appeal against the rejection of an application to set aside an *ex parte* order in a reference under section 30 of Land Acquisition Act was held in *Krishna Udayar* v. *Chinna Pillai*[1] to be competent under Order 43, rule 1 (*d*) of the Civil Procedure Code as there is nothing in the Land Acquisition Act which is inconsistent with Order 43, rule 1 (*d*). In *Venkateswara Rao*, In re[2], it was held that leave to appeal *in forma pauperis* cannot be restricted to a part of the subject-matter of the appeal. In *Raja of Bobbili* v. *Venku Naidu*[3], it was pointed out that though the proviso (*b*) to sub-rule (2) of rule 4 of Order 47, Civil Procedure Code, makes no mention of the exercise of due diligence, the words " was not within his knowledge or could not be adduced by him when the decree or order was passed or made " must be taken to be qualified by the words " after the exercise of due diligence". The scope and effect of paras. 5 and 17 of the Schedule II, Civil Procedure Code, was the object of consideration and explanation by a Full Bench in *Satyanarayanamurthi* v. *Venkataramanamurthi*[4]. It was thought by the Bench that referred the case to a Full Bench that there was a conflict between *Bala Pattabhirama Chetty* v. *Seetharam Chetti*[5] and *Muthyala Narayanappa* v. *Muthyala Ramachandrappa*[6]. The Full Bench held that there was no conflict between the actual decisions in the two cases and proceeded to decide the case on the construction of paras. 5 and 17. The actual decision in the case was this. Where an agreement provides for arbitration by a named arbitrator or arbitrators and such arbitrator or any one of such arbitrators is not available on account of death, refusal to act or other reasons before an application is made under paragraph 17 of Schedule II, Civil Procedure Code the Court has no power to appoint an arbitrator in his place. It is only if there is no provision in the agreement for the appointment of an arbitrator and the parties cannot agree that the Court has power to appoint an arbitrator. Where, however, on the date of an application under paragraph 17 the arbitrator was alive and died afterwards, the question whether under paragraph 5 another arbitrator can be appointed by the Court in his place will have to be decided on the construction of the particular agreement. If the intention of the parties as expressed in the Muchilika is to be bound by the decision of a named arbitrator, any provision which enables the Court to appoint another arbitrator would not be consistent with the agreement.

CRIMINAL PROCEDURE.—Where though private rights of parties in connection with the holding of a festival in a public road is the subject of a decision by a Civil Court, the question whether those rights can be allowed to be exercised without danger to public peace has according to the decision in *Murugappa Mudaliar* v. *Kuppuswami Mudaliar*[7], to be decided by the authorities responsible for the preservation of the public peace and that where there is a conflict between a public interest and private right the former must prevail. A general order upholding the possession of tenants in a dispute between them and their landlord when the tenants claim under a common title was held to be quite legal in *Muni Servai* v. *Tangaraya Onturiyar*[8], after negativing a contention that there should have been separate findings as to each of the tenants. The question for decision in *Ellappa Naicken* v. *Lakshmana Naicken*[9], was whether on the dismissal for default of a civil suit filed by one of the parties to a proceeding under section 145 in respect of the properties in the hands of a receiver, the other party would become automatically entitled to possession. It was held that though the party in default cannot bring another suit on the same cause of action, it was open to him or to the opposite party to bring a suit for recovery of the profits received by the receiver and that the Civil Court would then have to adjudicate as to who is entitled to the profits. In that suit the title to the property would be adjudicated and it is only that finding on title that will have the force of *res judicata* for the purpose of section 146 of the Criminal Procedure Code. In

1. (1948) 1 M.L.J. 119.
2. (1948) 2 M.L.J. 201.
3. (1948) 1 M.L.J. 356.
4. (1948) 1 M.L.J. 196 (F.B.).
5. (1894) I.L.R. 17 Mad. 498.
6. (1930) 60 M.L.J. 676: I.L.R. 54 Mad. 469.
7. (1948) 2 M.L.J. 458.
8. (1948) 2 M.L.J. 209.
9. (1948) 1 M.L.J. 383.

Surya Row v. *Sathiraju*[1], it was held that there was nothing wrong in a succeeding Magistrate pronouncing in Court the order of his predecessor under section 145 (6) because it is not a "judgment" to which the provisions of sections 366 and 367 of the Code would be applicable. When a Magistrate comes to the conclusion that both the parties to the dispute were in possession of portions of the land in dispute he does not lose all jurisdiction to pass an order under section 145 (6) for attachment as held in *Alagirisami* v. *Veerammal*[2]. A rather novel point fell to be decided in *C. W. Casse*, In re[3] in regard to the scope and extent of a Magistrate's power to record a statement under section 164, Criminal Procedure Code. There, an individual prayed that his statement should be recorded under section 164, Criminal Procedure Code, in order that it may be used for the purpose of an enquiry or trial which might take place in future. It was held that it was not obligatory upon a Magistrate to record the statement of an individual in such circumstances. On the general question it was held that it is not necessary that the Magistrate should be moved by the Police in order that he might record a statement. In cases where the police do not desire to have the statement of an individual recorded, there is nothing to prevent that witness to go to the Magistrate and request him to record the statement and if a Magistrate records his statement and transmits the same to the Court where the enquiry or the trial is to go on, there is nothing wrong in his action. In such a case the Magistrate has a very wide discretion in acting or refusing to act. Where bogus lottery tickets were sold by certain residents of South Canara to residents in Travancore through a resident agent in Travancore or sent by V.P.P. it was held in *Antony D'Silva*, In re[4], that the offence under S. 420, Indian Penal Code, was committed only in Travancore because the purchasers were deceived and made to part with their money only at that place. The Court also considered the effect of the absence of territorial jurisdiction or the certificate of the political agent in respect of some of the charges and held that the mere fact that the Court had no territorial jurisdiction or the requirement of the proviso to section 188, Criminal Procedure Code, had not been satisfied as regards one charge would not in any way exclude the jurisdiction of the Court to entertain another or other charges not similarly affected or render the prosecution under such charges illegal or irregular. Where there were different occurences in different jurisdictions during the course of a rioting, it was held in *Kista Pillai*, In re[5], that section 182 (3) of the Criminal Procedure Code would apply as the occurrences were really part of the same offence of rioting which is a continuing one. As remarked in *Chinnayya Goundan*, In re[6], the authorities are not quite uniform nor easy to reconcile on the question as to the necessity for a complaint under section 195, Criminal Procedure Code where same facts constitute a general offence which does not require a complaint by a Court or a public servant and a more aggravated particularised form of offence. After an exhaustive discussion of the case law on the subject, it was held that it was more in consonance with natural justice and equity that where on the same facts a general offence which does not require a complaint by a Court or a public servant is committed along with a more aggravated particularised form of offence, it is not open to the prosecution to circumvent the provisions of section 195, Criminal Procedure Code by resorting to proceed with the general minor offence without attempting to move the Court or officer concerned for taking action under section 195, Criminal Procedure Code. It was pointed out that in such a case the Court must consider the facts in the complaint as a whole and that if they disclose an offence for which a special complaint is necessary under the provisions of section 195, Criminal Procedure Code the Court cannot take cognizance of the case at all unless the special complaint has been filed. Their Lordships of the Privy Council remarked in *Gokuldas Dwarkadas Morarka* v. *The King*[7], that the concluding words of section 230 Criminal Procedure Code indicated that the Legislature

1. (1948) 1 M.L.J. 396.
2. (1948) 2 M.L.J. 642.
3. (1948) 1 M.L.J. 404.
4. (1948) 2 M.L.J. 132.
5. (1948) 2 M.L.J. 83.
6. (1948) 2 M.L.J. 448.
7. (1948) 1 M.L.J. 243 (P.C.).

contemplated that sanctions under the Criminal Procedure Code would be given in respect of facts constituting the offence charged. In considering the test for the determination of the question of necessity for sanction, their Lordships of the Judicial Committee held in *Gill* v. *King Emperor*[1], that it was impossible to differentiate between section 197, Criminal Procedure, and section 270 of the Government of India Act and that the words in the two sections have precisely the same connotation. The test as to the necessity for sanction under section 197, according to this decision is, whether the public servant, if challenged can reasonably claim that, what he does he does, in virtue of his office. Applying that test it was held that no sanction under section 197, Criminal Procedure Code, would be needed when a public servant is charged either with an offence under section 161, Indian Penal Code or with an offence under section 120-B read with either section 161, 165 or 420, Indian Penal Code. Similarly it was held in *Doraiswamy Iyer*, In re[2], that sanction under section 197 was not necessary on the facts of the case for the prosecution of a public servant for an offence under section 120-B, Indian Penal Code read with section 409. That there is no difference between any other Magistrate and a Presidency Magistrate in the case of examining the complainant before the postponement of the issue of process and the ordering of an enquiry under section 202 (1) was held in *P.N.S. Aiyar* v. *K.J. Nathane*[3], and also that the non-examination of the complainant by a Presidency Magistrate was an illegality and not curable under section 537. In *Nalliappa Pillai* v. *Palaniandi Ambalam*[4], it was pointed out that in dismissing a complaint under section 203, Criminal Procedure Code, it is not obligatory upon the Magistrate before whom the complaint is made or to whom it has been transferred to give an opportunity to the complainant to show that the report of the police enquiry is wrong. All that he has to do is to consider the statement on oath, if any, of the complainant as well as the result of the investigation or enquiry under section 202, Criminal Procedure Code before he dismisses the complainant. According to the decision in *Gill* v. *King Emperor*[1], when once sanction has been given under section 197 in respect of a charge under section 120-B read with section 420, Indian Penal Code and the charge is subsequently altered into one under section 120-B read with section 161, Indian Penal Code, there would be no necessity for a fresh sanction where the original complaint refers to facts which may equally support either of the charges because section 230 of the Criminal Procedure Code would become operative as soon as the sanction is given. The Full Bench in *Seraje Narayan Bhatta*, In re[5], to which a question of misjoinder of charges was referred remarked even at the outset that no general rule can be laid down as to when different offences can be said to have been "committed in the course of the same transaction" within the meaning of section 239 (*d*), Criminal Procedure Code, and that the question when it arises must be determined on the facts of the particular case. They therefore did not deal with the general principles which arose in the case except in relation to the particular facts of the case. In the case before the Full Bench, four accused were jointly tried, the 1st accused for an offence under section 302, Indian Penal Code, accused 1 to 3 for an offence under section 201, Indian Penal Code and the 4th for an offence under section 201 read with 109, Indian Penal Code and there was no accusation that accused 2 to 4 were in any manner connected with the murder at the time or before it was committed. The Full Bench held that the case did not fall within section 239 (*d*), Criminal Procedure Code and the joint trial of the accused was therefore illegal and that the convictions had to be set aside. In *Harichandran Pagadi* v. *Thangaswami Nadar*[6], it was held that when a litigant files an application in Court stating that he has withdrawn his complaint against his opposite party and for some reason or other the Court is not able to pass orders immediately, it is not open to that litigant later on to come for-

1. (1948) 2 M.L.J. 6 (P.C.).
2. (1948) 2 M.L.J. 116.
3. (1948) 1 M.L.J. 295.
4. (1948) 2 M.L.J. 358.
5. (1948) 2 M.L.J. 139 (F.B.).
6. (1948) 2 M.L.J. 571.

ward and plead that he has changed his mind and that the previous petition should not be acted upon. The language of sub-section (1) of S. 257, Criminal Procedure Code, was held by the Federal Court in *Sudhir Kumar Dutt* v. *King*[1], to be imperative and that the trial Court had no discretion under it to refuse to issue process to compel the attendance of any witness cited by the accused after he has entered upon his defence unless it is of the opinion that the application should be refused for any of the reasons which are specified in the section and which it is bound to record and that any improper refusal is a contravention of the clear provisions of section 257 and amounted to a denial of a valuable right conferred on the accused and would entail a retrial of the case. Where a Magistrate discharges an accused under section 259, it was pointed out in *Mappillaisami Thevar* v. *Muthuswami Iyer*[2], that he has no jurisdiction to set aside his order of discharge and that his only course was to take fresh cognizance of the case on a proper complaint and that the original complaint can be used as a foundation of the new trial. That in a case tried by a Bench of Magistrates there could only be one judgment in any event and not two differing judgments was pointed out in *Subbamma* v. *Ademma*[3], by a reference to section 264, Crimiminl Procedure Code and rule 131 of the Criminal Rules of Practice. The circumstances under which section 307, Criminal Procedure Code has to be applied arose in the case of *Periaswami Nadar*, In re[4], where a Judge's opinion was not to accept the prosecution evidence but the Jury's verdict of guilty was nevertheless accepted by the Judge. It was said in appeal that section 307 should have been applied and the matter referred to the High Court. Neither the fact that it was his own child to whom the accused was much attached that was murdered nor that he showed his remorse after the murder were extenuating circumstances in the opinion of the High Court in *Meerasa Rowther*, In re[5], to warrant a recommendation to Government under section 401, Criminal Procedure Code and rule 259 of the Criminal Rules of Practice for its exercising its prerogative of mercy. It was held in *Chelliah Servai*, In re[6], that where an accused has already had the benefit of an acquittal for an offence under S. 396, Indian Penal Code, section 403, Criminal Procedure Code, is a bar to his being tried again and convicted of an offence under section 395 or section 397 of the Indian Penal Code because offences under sections 395 and 397 are minor offences under section 238, Criminal Procedure Code, when considered in relation to an offence under section 396, Indian Penal Code. On a review of the case-law it was held in *Arunachala Goundan*, In re[7], that the provisions of section 412, Criminal Procedure Code, have never been considered as forbidding the High Court in revision from exercising just as wide powers as if there had been an appeal and that therefore the powers of a High Court in dealing with applications in revision where the accused has pleaded guilty are as ample as if an appeal on the merits had been entertainable. The question whether an order for retrial is necessary where an appellate Court sets aside a conviction on the ground of the trial being improper or irregular was considered and it was held that though that is the usual procedure it need not always be the rule. Sec. 423 of Criminal Procedure Code read with S. 528, Criminal Procedure Code, was held in *Ramaswamy Chetty*, In re[8], to empower a superior Court to transfer a case to itself for retrial. As to when additional evidence may be taken in appeal, it was held in *The Public Prosecutor* v. *Jeevaratnam*[9], that section 428, Criminal Procedure Code, only contemplated cases where there being already evidence on record the Court considers it unsatisfactory or where the evidence on record leaves the Court in such a state of doubt that it considers it necessary to enable it to decide the case to have further evidence. The proper time for agitating the propriety of an order of

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1. (1948) 2 M.L.J. 37 (F.C.).
2. (1948) 1 M.L.J. 301.
3. (1948) 2 M.L.J. 142.
4. (1948) 2 M.L.J. 411.
5. (1948) 2 M.L.J. 162.
6. (1948) 2 M.L.J. 267.
7. (1948) 1 M.L.J. 444.
8. (1948) 2 M.L.J. 646.
9. (1948) 1 M.L.J. 452.

discharge of some of the accused and framing of charges against the others was indicated in *Jayaraman*, In re[1], where it was held that the matter could be taken up in revision only when the Court has finally disposed of the matter. The powers of the High Court in revision in regard to orders of discharge and acquittal were considered in *Kapa Kasi Viswanatham* v. *Bondili Madan Singh*[2], and *Muniswami Chetty* v. *Muniswami Chetty*[3], respectively. In the first case it was held that when a discretion has been exercised by a Court of competent jurisdiction which is not on the face of it arbitrary, the High Court as a revisional Court will not interfere with an order of discharge and further that ordinarily the High Court will not entertain a revision against a discharge by a Magistrate where the aggrieved party has not moved the Sessions Court or the District Magistrate before coming to the High Court. In *Muniswami Chetty* v. *Muniswami Chetty*[3], it was held that the High Court in revision against an acquittal at the instance of a private party would not order a rehearing of the case especially where the offence is a technical and insignificant one and the parties are near relations. The question as to the competency of a reference to the High Court was considered in *Gowleru Kotrappa*, In re[4], and *Dhanaraju*, In re[5]. While in the first case it was pointed out that a reference to the High Court by a District Magistrate on questions of law raised during the coure of proceedings in the lower Court was incompetent because the Legislature has not chosen to give power to a District Magistrate to refer questions of law arising interlocutorily during the course of an enquiry or trial, it was ruled in the second case that references to the High Court are not desirable merely because the Sub-Divisional Magistrate disagrees with the trial Magistrate, especially in cases where the accused has a right of appeal. The nature of the order to be passed under section 471, Criminal Procedure Code, was the subject of the decision in *Public Prosecutor* v. *Nelliappa Pillai*[6], and it was pointed out that as the word "detained" in section 471denotes curtailment of liberty it is obligatory upon the Court to order the detention in a place and not with a person and that hence an order for detention with a relative was not a proper order. In *Rose Mary* v. *Arulswamy*[7], the Court after remarking that the occasional lapse from virtue of a husband would not entitle the wife to ask for maintenance under section 488, Criminal Procedure Code, held that the wife cannot refuse to go and live with her husband, solely on the ground of his having a mistress and that in the absence of cruelty it would not be a ground for her to claim maintenance under section 488. But the children would be entitled to maintenance, if there is a neglect to maintain them. The question whether the availability of a remedy by way of guardianship proceeding would be a bar to an application under section 491, Criminal Procedure Code, was considered in *Rama Iyer* v. *Nataraja Iyer*[8]. It was held therein that a minor has no will of his own and his detention against his father's will is unlawful and that it cannot be said that because it is open to the father to get himself appointed as the guardian of the person of the minor, application under section 491, Criminal Procedure Code is not the proper remedy. It is open to the father to avail himself of any of the remedies open to him. The decision in *Kapa Kasi Viswanathan* v.

1. (1948) 1 M.L.J. 341.
2. (1948) 1 M.L.J. 223.
3. (1948) 1 M.L.J. 395.
4. (1948) 2 M.L.J. 126.
5. (1948) 2 M.L.J. 557.
6. (1948) 1 M.L.J. 23.
7. (1948) 1 M.L.J. 399.
8. (1948) 1 M.L.J. 125.

Bondili Madhan Singh[1], points out that it is wrong to say that section 494, Criminal Procedure Code, does not authorise the Court to grant permission to withdraw a preliminary register case. It also held that it is not obligatory upon the Court to record any reasons for granting permission to withdraw. The question as to the legality of imposition of conditions in granting bail fell to be decided in *District Magistrate of Vizagapatam*, In re[2]. It was pointed out that in bailable offences there is no question of discretion in granting bail as the words of section 496 are imperative and that in such cases the Criminal Courts have no discretion while granting bail to impose any condition except demanding of security with sureties. Though the provisions of section 511, Criminal Procedure Code, have to be strictly complied with in regard to the proof of previous convictions, it was held in *Wahid*, In re[3], that in cases where the accused himself admits his previous convictions, it would not be wrong to treat it as sufficient proof. That an order for restoration of property could be passed by a revisional Court at the time of dismissing the revision application or within a month of that date, though it may be long after the conviction by the trial Court was held in *Berankutty Haji* v. *Raman*[4], on the strength of the indication contained in section 511 (3). Their Lordships of the Judicial Committee in *Gokul Chand Dwarkadas* v. *The King*[5], have held that a defect in the jurisdiction of a Court owing to an unvalid sanction can never be cured under section 537, Criminal Procedure Code, because it is the sanction which gives jurisdiction to the Court and when there is no valid sanction there is no jurisdiction at all for the Court to try the case. The non-examination of the complainant on oath before postponement of the issue of process and directing inquiry by police was held in *P. N. S. Iyer* v. *K. J. Nathan*[6], to be not an error, omission or irregularity in the complaint but a non-observance of a mandatory provision of law the infraction of which is a disregard of an express provision of law as to the mode of inquiry and as such not a mere irregularity such as could be remedied by section 537, Criminal Procedure Code. It is an illegality which goes to the very root of the matter. Failure to record a fresh sworn statement when the same case is taken on file after a discharge was held in *Mapillai Thevar* v. *Muthuswamy Iyer*[7], to be a very minor irregularity that can be cured under section 537, especially when the objection is not taken in the trial Court. While the impropriety of taking up cases and disposing of them after Court hours was pointed out in *Arunachala Goundan*, In re[8], the pronouncing of an order of acquittal on a Sunday was held in *Satyam*, In re[9] to be not without jurisdiction.

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1. (1948) 1 M.L.J. 223.
2. (1948) 1 M.L.J. 332.
3. (1948) 2 M.L.J. 526.
4. (1948) 2 M.L.J. 257.
5. (1948) 1 M.L.J. 243 (P.C.).
6. (1948) 1 M.L.J. 295.
7. (1948) 1 M.L.J. 301.
8. (1948) 1 M.L.J. 444.
9. (1948) 2 M.L.J. 114.